

IN THE DISTRICT COURT OF THE UNITED STATES  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

ROBERT J. NAGY,	)	2:08-CV-2555
	)	
Plaintiff	)	Charleston,
	)	South Carolina
VS	)	June 22, 2010
	)	
UNITED STATES OF AMERICA,	)	VOLUME II
	)	
Defendant	)	

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE DAVID C. NORTON,  
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Defendant: MR. NATHAN CLUKEY  
MR. GREGORY SEADOR  
MS. ELLEN WEIS  
US Department of Justice Tax Division  
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Proceedings recorded by mechanical shorthand,  
Transcript produced by computer-aided transcription.

1 THE COURT: Okay. Y'all got anything to talk about?

2 MR. COOPER: Your Honor, I have one thing in light  
3 of your bifurcation.

4 THE COURT: Yeah.

5 MR. COOPER: The special interrogatory I sent to  
6 y'all with my jury instructions, I amended it for the first  
7 part of the trial, just to talk about liability.

8 THE COURT: Okay.

9 MR. CLUKEY: Your Honor, would there be a time where  
10 we could submit some additional jury instructions, as well?

11 THE COURT: Yeah. I mean, that's fine. You know,  
12 what you are going to end up with is I'm going to give you a  
13 copy of the jury instructions and you can make additions and  
14 corrections. I'll also give you a copy of the proposed  
15 verdict forms or -- unless you want to agree on a verdict  
16 form, that's fine with me. If you can agree on a verdict  
17 form, I think I've said before, I'll sign anything the  
18 lawyers agree to unless it's a check, all right?

19 All right. So we got that. Thank you. Anything  
20 else?

21 MR. COOPER: The other thing is, to help me along  
22 with the -- I know they are going to put Mr. Nagy up in their  
23 case in chief, and you've discussed this, and I was up last  
24 night thinking about it -- about when he goes up in their  
25 case in chief, that I have the opportunity to question him at

1       that point in time?

2               THE COURT:   Yeah.

3               MR. COOPER:   But I can't redo it on my direct if I  
4       bring him in my case in chief?

5               And specifically, my issue is, is the whole tax  
6       return issue that they brought up in the opening. I would  
7       want to retalk to him about that after their examination but  
8       reserve my ability to do my full direct in my case in chief.

9               THE COURT:   Do you want to talk to him about his tax  
10       situation on cross-examination after the Government has  
11       called him and then you want to do it again --

12              MR. COOPER:   No.

13              THE COURT:   -- if you want to, as long as -- we only  
14       have one time. I mean, I don't want to --

15              MR. COOPER:   And that's my second question, is when  
16       I recall him in my case in chief and do my direct, if the  
17       Government's already -- and I'm sorry, I'm just trying to  
18       clarify -- if the Government is already asking the questions,  
19       they can't recross him on that issue again?

20              THE COURT:   Depends on what he says. I mean, if  
21       he's got -- if he takes inconsistent positions on the same  
22       issue, I think they probably can.

23              MR. COOPER:   Okay.

24              THE COURT:   Yeah.

25              MR. COOPER:   I was just trying to figure it out from

1 a time -- what would be the most efficient for the  
2 presentation.

3 MR. CLUKEY: If he elaborates, we obviously have the  
4 right to follow-up.

5 THE COURT: The same issues. And if you think they  
6 are cumulative, or something like that, you think it's  
7 cumulative, you object and I'll make a ruling on it at the  
8 time. Those are just kind of the general parameters.

9 MR. COOPER: I've just never done it this way and so  
10 I just wanted to make sure.

11 THE COURT: All right. Anything else?

12 MR. COOPER: No, Your Honor. That's all I had on my  
13 list.

14 THE COURT: Okay. Yes, sir?

15 MR. CLUKEY: That's all we have right now, Your  
16 Honor.

17 There are a number of exhibits that I was going to  
18 propose using on Mr. Debevc. We can talk about a couple of  
19 those, it might speed things up because there are pending  
20 objections.

21 THE COURT: All right. Have y'all talked about them  
22 yet?

23 MR. CLUKEY: No.

24 THE COURT: Why don't y'all talk about it. If you  
25 want some rulings, I'll be upstairs, we can use this time

1 more efficiently. And if you agree on them, then it's no big  
2 deal.

3 If you can't agree on them, give me a call and I'll  
4 come down and take a look at them.

5 Anything else, Mr. Cooper? Mr. Clukey? Mr. Debevc?  
6 You have been called today as a witness, too.

7 MR. DEBEVC: Yes, Your Honor.

8 THE COURT: So who do we have after we get done with  
9 this witness? What's next?

10 MR. CLUKEY: The next person is Colin Bowen, who  
11 will be played by John Douglas and --

12 THE COURT: In his Chesterfield accent.

13 MR. CLUKEY: Exactly. Slightly different.

14 And then it will be Mr. Debevc, and then it will be  
15 a video. I think that will probably take the day, if not,  
16 then --

17 THE COURT: Go from there. All right. Good.  
18 Thanks.

19 (Thereupon, there was a brief recess.)

20 THE COURT: What have we got?

21 MR. CLUKEY: A couple of things, Your Honor.

22 We have one exhibit we want to talk about, and we  
23 also had -- Mr. Cooper wanted to raise some response to the  
24 rulings on the transcripts.

25 THE COURT: Okay. All right. What about the

1 exhibit?

2 MR. CLUKEY: The exhibit is 297.

3 THE COURT: Government 297?

4 MR. CLUKEY: Yes. Government 297.

5 MR. CLUKEY: And go to page, I think it's 58 or 59.

6 58.

7 This is the tax return of Yuri Debevc, next page  
8 there, prepared by Mr. Nagy.

9 So go back to the first page of this document -- no,  
10 just 58 -- it shows his income for the year, we think it's  
11 relevant to this case and that -- tax dollars for the year  
12 with that kind of income.

13 THE COURT: Okay. What's your objection, Mr.  
14 Cooper?

15 MR. COOPER: It's a 402, 403 objection. That Mr.  
16 Debevc's tax returns have no bearing on Mr. Nagy's tax  
17 advice, whether it was false or fraudulent. This is simply a  
18 tax return, that it's my understanding, has never been  
19 audited and was accepted by the IRS.

20 MR. CLUKEY: That's actually an incorrect factual  
21 assumption.

22 And secondly, it was prepared during the existence  
23 of the scheme.

24 THE COURT: Well, what does it make more or less  
25 likely in your case against Mr. Nagy?

1                   MR. CLUKEY: That he knew or had reason to know that  
2 the other tax advice he was providing was not true, it was  
3 untruthful.

4                   THE COURT: How do you connect this tax -- well, Mr.  
5 Debevc's tax return to Mr. Nagy?

6                   MR. CLUKEY: Mr. Nagy is the one who told him that  
7 he could take a \$7 million loss. Those losses come from the  
8 startup companies. On the prior page, there is Mr. Nagy's  
9 signature.

10                  THE COURT: Okay.

11                  MR. COOPER: I mean, he signed a tax return, but  
12 again, it's his tax advice to Derivium, and I'm not  
13 understanding now Mr. Debevc, coming in here as a witness,  
14 how simply filling out a tax return has any bearing on what  
15 advice he gave on a 90% stock loan, I don't see how the dots  
16 are connected at all.

17                  MR. CLUKEY: Circumstantial evidence, Your Honor,  
18 regarding he knew or had reason to know regarding the truth  
19 or falsity of the tax advice he was giving at the identical  
20 time to the identical person, Yuri Debevc.

21                  MR. COOPER: I'm not aware of anything in evidence  
22 that would be false in this, and this is Mr. Debevc's  
23 personal return. We are talking about his advice to  
24 Derivium. I don't understand how Mr. Debevc's return  
25 reflects a 90% Stock Loan at all.

1                   MR. CLUKEY: That's obviously not the limited scope  
2 of 6700. You consider what businesses were doing during the  
3 scheme, all of their activities that may have some bearing  
4 that they knew or had reason to know.

5                   And by telling someone you can take a \$6 million  
6 loss when you don't have \$6 million in assets, that clearly  
7 would go to -- would go to whether someone knew or had reason  
8 to know that the other tax advice to the identical time, to  
9 the identical people, was false or fraudulent.

10                  THE COURT: I'll overrule your objection to that  
11 one, okay? Or that series of them.

12                  MR. COOPER: There was one part of Mr. Scrantom's  
13 deposition we agreed where you had stricken part of the  
14 designation, and I thought it was out of context, so we  
15 agreed to strike the rest of it.

16                  THE COURT: Okay.

17                  MR. COOPER: The other one was with, starting with  
18 Mr. Anderson, your objections, they are specifically page 10.

19                  Would you like me to hand it up?

20                  THE COURT: I think I've given it back to you, so --  
21 okay. I just --

22                  THE COURT: All right. So Mr. Anderson. All right.

23                  MR. COOPER: Page 10, line 17 --

24                  THE COURT: All right.

25                  MR. COOPER: -- through page 11, line 5.



1 THE COURT: Let's see here.

2 MR. COOPER: From the testimony, Mr. Anderson was  
3 asked specifically what his understanding was when he  
4 testified to that. We do think there is grounds.

5 THE COURT: Okay. Yes?

6 MS. WEIS: Your Honor, as we stated when we first  
7 made the objection Mr. Anderson was basically relaying  
8 hearsay, and anything that he would be saying, my  
9 understanding is, would be lack of foundation because he's  
10 relying simply again on hearsay.

11 Mr. Anderson's scienter understanding, or what he  
12 had reason to believe, is not at issue in this case.

13 So we believe that the Court correctly ruled to  
14 exclude it under 801 and 602.

15 THE COURT: Okay. I mean, isn't he just parroting  
16 what he was told, hearsay?

17 MR. COOPER: The question is what was his  
18 understanding? I don't think there was a hearsay question.

19 THE COURT: Well, there is a hearsay answer that was  
20 implied. I mean --

21 MR. COOPER: He was at Derivium, as well, like  
22 everyone else, Mr. Kelley, for, what, five or six years? And  
23 over time in a small office, as Mr. Kelley put it, you know,  
24 you come to understand certain things.

25 THE COURT: Well, the hedge, quote unquote, from

1        what your testimony is, by Coca-Cola syrup, Mr. Cathcart  
2        didn't let anybody know what it was.

3                MR. COOPER:    I understand.

4                THE COURT:    Okay.    So, I mean, how is his  
5        understanding of something that Dr. Cathcart kept secret not  
6        hearsay or speculation, or whatever?

7                MR. COOPER:    I just believe it's a 602 on personal  
8        knowledge and questions.

9                THE COURT:    All right.    I'll overrule your objection  
10       to my ruling on their objection.

11               What's next?

12               MR. COOPER:    The next one is pages 86 through 87,  
13       25.

14               You ruled on it because the McDermott Will & Emery  
15       opinion is not into evidence.    It's now into evidence.

16               MS. WEIS:    Actually, Your Honor --

17               MR. COOPER:    Hold on.

18               MS. WEIS:    We would agree that if there is another  
19       tax opinion mentioned in there, that you would strike out  
20       that portion, so the testimony was only reflective of the  
21       McDermott Will & Emery opinion.

22               He saw a memo from, I believe McDermott Will &  
23       Emery.    On page 89, he stated that he never even saw that  
24       opinion.

25               So he would be relaying hearsay about a hearsay

1 document that we understand the Court has admitted only for  
2 the purpose of Mr. Nagy's scienter. And Mr. Nagy did not  
3 work in the San Francisco office, and he explained the  
4 substantive contact with the marketing office in the first  
5 place.

6 THE COURT: Okay. I think the Government's problem  
7 with this is probably, the basis for the objection is the top  
8 of page 89:

9 "Question. What about the McDermott Will & Emery  
10 memorandum report?

11 "Answer. I don't recall actually seeing this. I  
12 recall hearing about it."

13 Okay? All right. I'll keep my ruling the same.

14 MR. COOPER: The other one dealt with the McDermott  
15 opinion, as well. It's on page 143, 12 through 23.

16 THE COURT: 143, 12 through 23?

17 MS. WEIS: Your Honor, Mr. Anderson is testifying as  
18 to what contact he had with McDermott Will & Emery, if any.

19 It's actually not quite clear he had any personally,  
20 but again, there is no indication that Mr. Nagy was involved  
21 in any of those conversations. And so we don't understand --  
22 it's clearly hearsay, the conversations that occurred, the  
23 substance of them. And given that Mr. Nagy, as far as this  
24 testimony goes, was not a party to those conversations, we  
25 don't understand the relevance, either.

1 THE COURT: Who is Jerry Kaplan?

2 MR. COOPER: He's a lawyer at McDermott Will &  
3 Emery.

4 THE COURT: That's what I thought.  
5 What's the ESOP QRP program?

6 MR. COOPER: That's a program in which Mr. Nagy  
7 authored a memorandum in 2002 about it. It was essentially  
8 another stock loan, just using a different kind of property,  
9 as defined in the Internal Revenue Code.

10 THE COURT: Is it the same program or --

11 MR. COOPER: The structure is the same, yes, sir.

12 MR. CLUKEY: It's a variation, Your Honor, but the  
13 only two programs in this case are the 90% Stock Loan and the  
14 90% FRL, I don't know if any transactions were ever done on  
15 the QRP.

16 MS. WEIS: It's the same thing, so the ESOP QRP  
17 involve lots of letters that mean the same thing.

18 THE COURT: Okay. Somebody mentioned something, I  
19 might be wrong, about Mr. Nagy having some contact with  
20 McDermott Will & Emery, or was it Mr. Cathcart? I don't  
21 remember. Somebody was independently, from what's in  
22 evidence.

23 MR. CLUKEY: Mr. Nagy did, Your Honor.

24 MR. COOPER: There was an e-mail where we were first  
25 arguing the exhibits that we -- the objection was, I think

1 they brought it up, where someone asked Mr. Nagy, did he have  
2 contact with McDermott Will & Emery. That's my recollection.

3 MR. CLUKEY: Your Honor, there is no evidence --  
4 this relates to the same thing, we talked to --

5 THE COURT: Well, I'll think about that one, okay?  
6 We'll -- none of these are for today anyway, right?

7 MR. CLUKEY: Two are for tomorrow, Your Honor. We  
8 can do them during the break.

9 THE COURT: We'll go over them, but we just don't --  
10 I don't want the jury sitting back there while we are doing  
11 this.

12 MR. CLUKEY: Of course.

13 THE COURT: All right. So Mr. Kelley, come on back.  
14 (Thereupon, the jury returned to the courtroom.)

15 THE COURT: Okay. Welcome back, ladies and  
16 gentlemen of the jury. We'll continue with the examination  
17 of Mr. Kelley at this time.

18 Yes, sir. Mr. Cooper?

19 MR. COOPER: Thank you, Your Honor.

20 CONTINUED CROSS-EXAMINATION

21 BY MR. COOPER:

22 Q. Your volunteer work went well?

23 A. Yeah.

24 Q. This is Government's Exhibit 13 that we were talking  
25 about, the reports that you did for, in this case, the

KELLY- CONTINUED CROSS-EXAMINATION

1 lender, Optech?

2 A. Okay.

3 Q. Do you recall where we left off on there yesterday?

4 A. No, not exactly.

5 Q. Okay.

6 A. Okay.

7 Q. Did you send this report to Optech?

8 A. Yes, it looks like a report I would send out.

9 Q. And was it sent monthly?

10 A. Yes.

11 Q. And because you sent a report to a lender monthly, did  
12 that make you believe it was a real lender?

13 MS. WEIS: Objection.

14 THE COURT: Sustained.

15 Go ahead and rephrase that question.

16 Q. Were you required under the contract with Optech to send  
17 them monthly reports?

18 A. That was my understanding, yes.

19 Q. And because you were having to do activities for a  
20 lender, was it your belief that Optech was --

21 MS. WEIS: Objection.

22 Q. -- an offshore lender?

23 THE COURT: Basis?

24 MS. WEIS: Argument.

25 THE COURT: Overruled.

KELLY- CONTINUED CROSS-EXAMINATION

1 THE WITNESS: Say that again?

2 Q. Okay. Because you were sending monthly reports to Optech  
3 under your administration agreement, did you believe Optech  
4 was an offshore lender?

5 MS. WEIS: Objection, 602.

6 THE COURT: Overruled.

7 Q. Will you answer?

8 A. Yes. We -- that was how they were portrayed to us in --

9 MS. WEIS: Objection, hearsay.

10 THE COURT: Sustain that part, okay?

11 Q. And you sent information to Optech about the receipt of  
12 the collateral?

13 A. Yes. That's correct.

14 Q. And you sent information to Optech about the sale of the  
15 collateral?

16 A. Yes.

17 Q. And this report was sent to Optech, correct?

18 A. I'm sorry. Say that again?

19 Q. It was sent to Optech?

20 A. Yes.

21 Q. And it was an internal report?

22 MS. WEIS: Objection, foundation.

23 Q. It was an internal report for Veridia?

24 A. Yes.

25 THE COURT: Mr. Cooper, you know, they pay me a

KELLY- CONTINUED CROSS-EXAMINATION

1 pretty good salary to rule on objections.

2 MR. COOPER: I'm sorry.

3 THE COURT: And if I don't get to rule on them, then  
4 I don't earn my salary. It's terrible. If you want to rule  
5 on them and say that they are okay, just let me know, and  
6 when you want to rule on one, let me know, okay?

7 MR. COOPER: I'm sorry.

8 THE COURT: That's all right.

9 Go ahead.

10 Q. Was this an internal report for Veridia?

11 A. Um, I'm -- I'm not sure what you mean by "internal report  
12 for Veridia". It was created by Veridia and it was something  
13 that we would then send to Optech; we would not send it to  
14 anyone other than our internal office and the lender.

15 Q. And that was my next question.

16 Were these monthly reports sent to the borrowers?

17 A. A report like this?

18 Q. Yes, sir.

19 A. No.

20 Q. This is Government Exhibit Number 49.

21 And the last report was for Optech. This one is for  
22 Bancroft Ltd.

23 MS. WEIS: Objection, Your Honor. This document is  
24 not in evidence.

25 THE CLERK: Not in evidence.



KELLY- CONTINUED CROSS-EXAMINATION

1 MR. COOPER: Okay. I'm sorry.

2 THE COURT: So go ahead.

3 MR. COOPER: Well, it's Government Exhibit 49. Do  
4 you have an objection to it?

5 MS. WEIS: No, Your Honor.

6 THE COURT: Now it's in evidence. All right. Fine.

7 (Thereupon, Government's Exhibit Number 49 was  
8 received in evidence.)

9 Q. Is this a monthly report that Veridia would send to  
10 Bancroft?

11 A. Yes.

12 Q. And again, because you were sending monthly reports to  
13 Bancroft, did you believe it was a real lender?

14 MS. WEIS: Objection.

15 THE WITNESS: Yeah.

16 THE COURT: Overruled.

17 Q. And were these monthly reports sent to borrowers?

18 A. No.

19 Q. And you mentioned yesterday that someone from England  
20 visited the office in Charleston?

21 A. Yes.

22 Q. Do you recall that person's name?

23 A. No.

24 Q. Would -- what about the name Recorden?

25 A. I'm sorry?

KELLY- CONTINUED CROSS-EXAMINATION

1 Q. Recorden. Does that ring a bell?

2 A. A person's name Recorden?

3 Q. Yes, sir.

4 A. It doesn't ring a bell, but I don't remember what the  
5 person's name was.

6 Q. Did you interact with an IT specialist at Bancroft?

7 MS. WEIS: Objection, foundation. I think he  
8 testified yesterday he never spoke to anyone in IT.

9 THE COURT: Overruled.

10 Go ahead.

11 THE WITNESS: Um, you asked if I talked to  
12 someone -- I'm sorry. Say the question again, please.

13 Q. Did you ever speak with an IT specialist at Bancroft?

14 A. Well, I don't know -- I don't know what you mean by  
15 with -- we spoke with an IT specialist who was working with  
16 Bancroft to help us transmit --

17 MS. WEIS: Objection, hearsay.

18 THE COURT: Overruled.

19 THE WITNESS: I don't -- I don't know what his, you  
20 know, employment relationship was with Bancroft, whether he  
21 was a subcontractor or whether he worked for them in IT.

22 It's quite common to have a subcontractor, you know,  
23 as a representative of the company you are working with,  
24 because they are technical people that you can talk to.

25 Q. And yesterday, I believe when you first met Dr. Cathcart,

KELLY- CONTINUED CROSS-EXAMINATION

1 he was very secretive about his hedging strategy?

2 A. Yes. That part he did not disclose.

3 MR. COOPER: Thank you. That's all, Your Honor.

4 THE COURT: Yes, ma'am?

5 REDIRECT EXAMINATION

6 BY MS. WEIS:

7 Q. Mr. Kelley, just a couple of questions and hopefully you  
8 can go home.

9 Now, yesterday Mr. Cooper asked you about the number  
10 of customers you were aware of that -- where Derivium wasn't  
11 able to return their stock back.

12 Do you recall that topic, testimony?

13 A. Well, right. We talked about the ones that Dr. Cathcart,  
14 you know --

15 Q. Okay.

16 A. -- yes.

17 Q. Are you aware that there was more than 120 transactions  
18 in which Derivium was not able to return the stock?

19 A. I don't know the number, but --

20 Q. Okay.

21 A. -- later.

22 Q. Now, you said that you would occasionally -- you were  
23 asked about times that you would refer customers to Mr. Nagy  
24 to answer questions about, you know, tax aspects of their  
25 participation in the program?

## KELLY- CONTINUED CROSS-EXAMINATION

1 A. Yes. That's correct.

2 Q. Mr. Nagy was, I believe you said in your e-mail, the  
3 go-to person for those sorts of questions; is that right?

4 A. For our office?

5 Q. Right.

6 A. Yes.

7 Q. You worked in the back office or the operations?

8 A. Yes.

9 Q. You didn't work in marketing; is that correct?

10 A. No, I did not.

11 Q. So to the extent that Mr. Nagy's memos were talked about  
12 with customers by marketing staff, you wouldn't have known  
13 anything about that; is that correct?

14 A. Other than the fact that, you know, we knew that his  
15 services were.

16 Q. Right.

17 Now, Mr. Kelley, I didn't really ask you much about  
18 your background, but you are not a CPA, are you?

19 A. No, I'm not.

20 Q. You are not an accountant, certified or --

21 A. I'm not.

22 Q. -- otherwise?

23 A. No.

24 Q. You are not a tax professional?

25 A. No.

KELLY- CONTINUED CROSS-EXAMINATION

1 Q. You don't consider yourself to be giving tax advice or  
2 being a tax advisor?

3 A. Definitely not.

4 Q. You weren't involved in setting up Bancroft Ventures  
5 Ltd., were you?

6 A. No, I wasn't.

7 Q. And you didn't have access to their books, Bancroft's  
8 books, did you?

9 A. No, I did not.

10 Q. Now, Mr. Cooper was asking you some questions about  
11 different reports that you -- you know -- send out, um -- and  
12 you know, in addition to referring customers with tax  
13 questions to Mr. Nagy, you had asked for his input on what  
14 should go into some of those reports; is that correct?

15 A. From an accounting standpoint, that's correct.

16 Q. Okay. So the quarterly reports that went to customers, I  
17 think we talked about that, you asked for his input on  
18 whether or not interest should be included in those reports?

19 A. The quarterly reports were already in existence before I  
20 started working there, so the basic format was already there.

21 And so if I directed a question to Mr. Nagy, it was  
22 about the report as a whole. I don't believe that there was  
23 any, you know, word line, unless it related to how we would  
24 calculate in doing the math.

25 Q. Okay. So you asked him at least some questions about the

KELLY- CONTINUED CROSS-EXAMINATION

1 content of the report?

2 A. I'm sure I did.

3 Q. And the annual reports, you asked for his input on the  
4 content, the annual reports sent to customers; is that  
5 correct?

6 A. Worked closely on the annual reports.

7 Q. Right.

8 And the invoices that Bancroft -- or I'm sorry --  
9 that Derivium used -- for instance, we talked about the  
10 Canadian server, you talked with him about setting up, making  
11 sure those invoices were correct, accurate; is that correct?

12 A. Well, properly accounted for. Not the accuracy of the  
13 invoice, but as far as how it fit within the accounting side.

14 Q. Okay. And the reports we looked at just now, Mr. Cooper  
15 pulled up Exhibit 13, one of the reports you would send to  
16 Optech.

17 You -- I believe you talked about this yesterday,  
18 you asked Mr. Nagy what he thought about those reports, the  
19 format of that report before you sent it to Optech; is that  
20 correct?

21 A. I'm -- if I did, and it wouldn't be for me to ask for  
22 something from that, it would be from the accounting  
23 standpoint, yes.

24 Q. Okay. Now, you said that those reports were only, you  
25 know, either used for internal purposes or sent to Optech.

KELLY- CONTINUED CROSS-EXAMINATION

1 They weren't sent to customers; is that correct?

2 A. That's correct.

3 Q. But Mr. Nagy, you showed them to Mr. Nagy, the draft of  
4 the report; is that correct?

5 A. Well, I'm certain -- you know, if I asked him questions  
6 about the format of the reports, he would have seen the  
7 report, yes.

8 Q. Okay. Now, were you here yesterday when Mr. Strickland  
9 talked about sort of the worst case scenario from his view  
10 with Derivium where a stock for a customer was up here and it  
11 was worth more than the amount of the loan payoff? Do you  
12 recall that testimony?

13 MR. COOPER: Objection. 602.

14 THE COURT: She's asking him to establish something.  
15 So I'll overrule that objection.

16 THE WITNESS: Um, I was -- yes, I was in the room  
17 for his testimony yesterday.

18 Q. So you recall where he described that if the stock was  
19 worth more than the amount the customer had to pay back,  
20 Derivium would have to come up with extra cash to return that  
21 customer's stock, he described that as sort of a worst case  
22 scenario?

23 MR. COOPER: Objection. Outside the scope of  
24 direct.

25 THE COURT: That I'll sustain.

KELLY- CONTINUED CROSS-EXAMINATION

1 MS. WEIS: Well, it goes to Exhibit 172, which Mr.  
2 Cooper raised on cross.

3 MS. WEIS: Sam, could you pull up Exhibit 172? Can  
4 you rotate it around?

5 THE COURT: Okay. Overruled.

6 Q. Now, Mr. Kelley, these "In The Money" reports that Mr.  
7 Cooper asked you about --

8 A. Yes.

9 Q. -- they describe -- if you go over, they describe the  
10 amount of the customer's stock relative to how much money  
11 they are going to need to get back to Derivium at the end of  
12 the loan; is that correct?

13 A. Um, I'm not sure I follow the question exactly, you know,  
14 as you phrased it, but this does show, you know, the value of  
15 their, you know, loan at the beginning, the value of the loan  
16 at their end, the value of their collateral at the beginning  
17 at the end.

18 Q. Okay. And so --

19 A. Is that what you are asking?

20 Q. Sure.

21 So if you look at the second line, can you highlight  
22 the Don Hancock line? That last number over there:  
23 "Negative." Meaning -- you understand that to mean negative?

24 A. Correct.

25 Q. Okay. So negative \$20,218,887 that his stock, his



KELLY- CONTINUED CROSS-EXAMINATION

1 collateral, is worth \$20 million more than what he would owe  
2 at maturity, is that --

3 A. At the date of this report.

4 Q. Okay. Now, you said that you weren't sure if you sent  
5 these reports to Mr. Nagy; is that correct?

6 A. That's correct.

7 Q. But you could have sent them to Mr. Nagy?

8 A. It's -- yeah. I would have to look at, you know, the  
9 e-mails, you know, on the distribution list.

10 Q. And if you weren't sending these reports to him, you did  
11 send some reports to Mr. Nagy containing information about  
12 how much the customer's stock was worth relative to what they  
13 would owe at maturity; is that correct?

14 MR. COOPER: Objection, 602.

15 THE COURT: Overruled.

16 THE WITNESS: Um, are you referring to, you know, if  
17 I sent him something asking him about, you know, the format  
18 of the report or --

19 Q. No. Would you send it -- I'm sorry -- you said that he  
20 would request data from you on occasion?

21 A. Yes.

22 Q. Okay. So one of those types of reports that you would  
23 put together for him would include the same type of  
24 information, how much the customer's stock was worth relative  
25 to how much was owed on the loan at maturity?

KELLY- CONTINUED CROSS-EXAMINATION

1       A. It's possible. I mean, I don't remember -- as I said, I  
2       don't remember the specific reports that I might have  
3       included Bob Nagy on, but it's entirely possible.

4       Q. Would it help to take a --

5       A. Sure.

6       Q. So Mr. Kelley, if you look up at the top, right-hand  
7       corner, is that your handwriting?

8       A. Yes.

9       Q. And is this -- you see where it says: "Request by B.  
10       Nagy, 9-7-01"?

11       A. Yes.

12       Q. So Mr. Kelley, did you -- did you, in fact, provide  
13       reports to Mr. Nagy that described how much customer's stock  
14       had changed in value? For instance, how much it had gone up  
15       in value?

16       A. Let me look at the report here.

17       Q. Sure.

18       A. Okay. I'm sorry. Ask your question.

19       Q. Did you, in fact, provide reports to Mr. Nagy that  
20       contained the same topic of information as the "In The Money"  
21       reports?

22       A. Yes. That's what is shown in this report.

23       Q. Now, Mr. Kelley, I think you said yesterday that you are  
24       being sued by a customer in connection with your work at  
25       Derivium?

KELLY- CONTINUED CROSS-EXAMINATION

1 A. That's correct.

2 Q. And I don't want to get into the details of it, but he's  
3 made some allegations that you misled him in some respect; is  
4 that correct?

5 A. Um, I believe so. It's been a long time since I've seen  
6 it, but yes.

7 Q. Now, I'm sorry --

8 A. Nothing. I'm sorry.

9 Q. Mr. Cooper asked you, you know, if you suspected anything  
10 while you were working at Derivium and you said no, you  
11 didn't think anything was wrong; is that correct?

12 A. Well, we were talking about, you know, his use of the  
13 word, you know, broad, over --

14 Q. Untoward?

15 A. -- things, but you know, from a legal standpoint, no.

16 Q. But --

17 A. I did not think that we were doing anything, you know,  
18 illegal there.

19 Q. But if you were to say today that you might have  
20 suspected something along those lines, that would have  
21 personal implications for you in connection with that  
22 lawsuit; isn't that right?

23 A. Um, I have not actually discussed that with my lawyer,  
24 but, you know, I would -- he's not here, but I -- I would  
25 imagine that's entirely possible that, you know --

KELLY- RECROSS-EXAMINATION

1 Q. Okay.

2 A. -- we -- I'm sure they are looking at everything I say.

3 Q. All right.

4 MS. WEIS: Well, thank you very much, Mr. Kelley.

5 THE WITNESS: Okay.

6 MS. WEIS: You were more than generous with your  
7 time. We don't have any other questions.

8 THE COURT: Thank you.

9 RECROSS-EXAMINATION

10 BY MR. COOPER:

11 Q. Mr. Kelley, everything you say up there was the truth?

12 A. Yes.

13 Q. Thank you.

14 THE COURT: Mr. Kelley, the truth is you can leave  
15 right now, okay? You can just leave all that stuff and we'll  
16 take care of it.

17 THE WITNESS: Leave all this stuff?

18 THE COURT: Right.

19 Okay. What's next?

20 MR. CLUKEY: Your Honor, the United States calls  
21 Colin Bowen.

22 THE COURT: Okay. Ladies and gentlemen of the jury,  
23 I think that one of the lawyers talked about pretrial  
24 preparation and not being able to call witnesses who are out  
25 of state, or some rule about it.

## KELLY- RECROSS-EXAMINATION

1 But in preparation, the lawyers go and take a  
2 deposition. And the deposition is just like testimony. The  
3 person is sworn to tell the truth. And although that person  
4 can't be here, the deposition is here, and the lawyers will  
5 read the questions and somebody will read the answers.

6 And so it's testimony that you can consider in this  
7 case as like this witness was right here except we are doing  
8 it in this way. But this is a written deposition.

9 Mr. Douglas will prove to us that he can read, and so he's  
10 going to be role playing the deponent, which one?

11 MR. CLUKEY: Colin Bowen.

12 THE COURT: Colin Bowen.

13 And he's going to ask him questions, and Mr. Douglas  
14 will respond to what Mr. Bowen said.

15 Now, later on in the trial, I believe there is going  
16 to be some video depositions, which is the same thing, the  
17 same kind of testimony, so you can consider it in trying an  
18 arrive at your judgment of his credibility just like any  
19 witness, all right?

20 Mr. Douglas?

21 (Thereupon, the deposition of Colin Bowen was read  
22 to the jury.)

23 MR. CLUKEY: Your Honor, we would like to offer  
24 Exhibit 41 into evidence.

25 THE COURT: Any objection?

KELLY- RECROSS-EXAMINATION

1 MR. COOPER: I've got an 802, a 402, a 403 objection  
2 to it.

3 MR. CLUKEY: 802 would be consistent with your prior  
4 ruling on the conspiracy.

5 THE COURT: Okay.

6 MR. CLUKEY: And also, we are not offering it for  
7 the truth of the matter asserted.

8 THE COURT: Okay. You are offering the whole thing,  
9 all five or six pages?

10 MR. CLUKEY: Yes, Your Honor.

11 THE COURT: Okay. Overruled.

12 (Thereupon, Government's Exhibit Number 41 was read  
13 into the record.)

14 (Thereupon, the reading of the deposition of Colin  
15 Bowen continued to be read to the jury to its completion.)

16 THE COURT: Okay. Thank you.

17 MR. CLUKEY: Your Honor, we call as our next witness  
18 Yuri Debevc.

19 THE COURT: Okay. Mr. Debevc.

20 THE CLERK: Place your left hand on the Bible and  
21 raise your right hand.

22 THE COURT: You've got to be sworn for me, Mr.  
23 Debevc.

24 THE CLERK: Place your left hand on the Bible and  
25 raise your right hand.

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1 State your name for the record.

2 THE WITNESS: Yuri Debevc.

3 THEREUPON:

4 MR. YURI DEBEVC,

5 Called in these proceedings and having been first duly sworn  
6 testifies as follows:

7 THE CLERK: Thank you. Be seated on the witness  
8 stand.

9 DIRECT EXAMINATION

10 BY MR. CLUKEY:

11 Q. Good morning, Mr. Debevc.

12 A. Good morning. I'm able to see the first box from this  
13 angle. Thank you.

14 Q. Mr. Debevc, you were involved in the 90% loan program  
15 from 1998 through the end of 2005; is that right?

16 A. That is correct.

17 Q. You were a coowner of Derivium Capital?

18 A. I was a minority owner starting in 2000.

19 Q. Starting in the year 2000?

20 A. I joined Derivium First Security Capital as an employee,  
21 and then I was given a participation in the company that was  
22 essentially backdated to my joining; however, that happening  
23 in late 1999 or 2000.

24 Q. You say "backdated". There was an agreement in place  
25 that at one point in time -- we are going to see that

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1 document later on -- but there was a document that was  
2 backdated to reflect ownership at an earlier point in time?

3 A. At an earlier point in time. Actually, when I wasn't  
4 even -- back to January of 1998 when I was not even here.

5 Q. And you signed the document saying that you were an owner  
6 in 1998, and you weren't really an owner in 1998.

7 Is that right, Mr. Debevc?

8 A. This was something presented to me by the attorneys for  
9 the company and they said it was fine and I believed the  
10 attorneys.

11 Q. You also owned a company called Veridia, didn't you?

12 A. Yes, I did.

13 Q. And so if we look on this chart here we see Derivium  
14 Capital, and we see that company Veridia?

15 A. There was one in, I think -- I believe December of 2002,  
16 early 2003.

17 Q. And what's FSC on here?

18 A. That would be First Security Capital. When I joined the  
19 firm, it was called First Security Capital, and there was a  
20 name change to Veridia Capital, I believe in January of 2000.

21 Q. So right here we've got a box name of a company FSC First  
22 Security Capital. There is a name change, still the same  
23 company, right?

24 A. Name change only. Correct.

25 Q. And then -- we are going to get into this a little bit



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1 later -- but then the company splits up into two companies  
2 doesn't it?

3 A. Um, that is correct.

4 Q. And you own this company a hundred percent, right?

5 A. That is correct.

6 Q. You owned 25 percent of this company, right?

7 A. That is correct.

8 Q. Charles Cathcart owned 50 percent?

9 A. That is correct.

10 Q. And Scott Cathcart, his son, owned 25 percent; is that  
11 right?

12 A. That is also correct.

13 Q. Now, Mr. Debevc, when a 90% Loan customer gave Derivium  
14 stock, that stock was sold, wasn't it?

15 A. Um, yes, it was. It's a first part of the hedging.

16 Q. It was sold?

17 A. Yes. It was sold that -- the sale was necessary. If I  
18 may explain?

19 Q. We'll come back to this.

20 THE COURT: No, he can explain an answer.

21 Go ahead.

22 THE WITNESS: May I?

23 THE COURT: Yeah.

24 THE WITNESS: Thank you.

25 The sale of the stock was used at -- the valuation

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1 of the sale of the stock was used to calculate the value of  
2 the stock. So the sale was a necessary ingredient to  
3 determine the value of the stock.

4 Q. The sale of the stock actually was necessary to determine  
5 the amount of the loan, wasn't it?

6 A. The value of the -- the value of the stock, and then  
7 calculate 90 percent of that value, is the loan.

8 Q. Derivium didn't even know how much to loan a customer  
9 until it sold the stock; isn't that right?

10 A. Um, that was correct and that was in the documentation.

11 There was an estimate as to what the value of the  
12 stock would be, but not the exact value until the stock was  
13 sold.

14 Q. All right. So the way the program worked, a customer had  
15 a stock, transfer the stock to Derivium, and you would give  
16 an estimate at that point in time just by looking on  
17 Bloomberg, looking on some market information; is that right?

18 A. Negative.

19 The customer would know what their stock --  
20 approximate the share price was. And they had the need for a  
21 certain amount of cash or loan, they would calculate, more or  
22 less, how much their stock -- how much of their securities  
23 they needed to transfer. And the loan was based on that --  
24 the documentation was based on that approximation.

25 Q. The documentation was based on the approximation, but the

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1 actual amount of the loan was based on the sale amount; isn't  
2 that right?

3 A. That is correct.

4 Q. Mr. Debevc, you and your employees told customers, after  
5 the stock had been sold, you told them it had been hedged,  
6 didn't you?

7 A. That was -- the sale was, in fact, the hedge.

8 Q. You didn't tell them it was sold, though, did you?

9 A. Um, the -- no, we did not, but the sale was -- from the  
10 program to Dr. Cathcart, was for trade as a hedge, initial  
11 hedge.

12 Q. I just want to make sure I'm clear: You did not tell  
13 customers their stocks had been sold; is that right?

14 A. That is correct.

15 Q. Between 1998 and 2000, I believe you said the 90% Loan  
16 Program generated nearly a billion dollars in stock  
17 transactions; is that right?

18 A. I don't believe that I said that. Somebody else might  
19 have said that, but it's approximately correct.

20 They presented approximately a billion dollars worth  
21 of collateral, or approximately \$90 million worth of stock  
22 loans.

23 Q. You believe that to be true based on a billion dollars of  
24 stock loans?

25 A. I think that is a good number.

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1 Q. Now, Mr. Debevc, you admit that some of the 90% Loan  
2 customers that participated in this scheme did not get their  
3 stock back; is that right?

4 A. That's correct.

5 Q. Some 90% Loan customers' loans, those were defaulted on,  
6 right?

7 A. That is correct.

8 Q. Now, the first default was in 2001; is that right?

9 A. I don't recall, but maybe you can refresh my memory.

10 MR. CLUKEY: Show Mr. Debevc Exhibit 256. It's going  
11 to be item number 70, but don't publish it.

12 Q. It's item number 70. You can go back to the first page,  
13 Mr. Debevc. You -- if you can take a look at this document,  
14 it's on the screen in front of you.

15 Is there a document up on the screen in front of  
16 you?

17 A. No.

18 THE CLERK: No, there is not. Hold on.

19 MR. CLUKEY: Sorry.

20 MS. WEIS: May I approach the witness, Your Honor?

21 THE COURT: Sure.

22 THE CLERK: We are not going to get it to him  
23 without them seeing it.

24 MR. CLUKEY: Is that right?

25 THE CLERK: Yeah.

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1 MR. CLUKEY: Okay.

2 THE CLERK: It's off to the jury and to the  
3 witness --

4 MR. CLUKEY: I see.

5 THE COURT: -- for the Judge to look at and  
6 attorneys.

7 So you have a hard copy for him to look at?

8 MR. CLUKEY: He's got one now.

9 THE WITNESS: What am I looking at?

10 Q. So the first page of this document, you recognize this?

11 A. Yes, I do.

12 Q. The United States asked you for some admissions?

13 A. Correct.

14 Q. And then if you flip ahead to paragraph 70.

15 A. 70. Thank you. Yes, I see that.

16 Q. You see that?

17 A. Yes, I do.

18 Q. So I'll ask you again: The first default, you would  
19 agree, was in 2001; is that correct?

20 A. That refreshes my memory since -- that is correct.

21 Q. And the second default was in 2002?

22 A. Um, that is -- that is also correct from this document.

23 Q. All told, there was 126 customer defaults; isn't that  
24 correct, Mr. Debevc?

25 A. I think that you would qualify that as in the timeframe,

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1 Bancroft -- rather Derivium, went bankrupt in September of  
2 2005, I believe, and I don't know how many of those defaults  
3 would have occurred after that date.

4 Q. But in the end, you are aware that there were 126  
5 defaults on customers' 90% Loan obligations?

6 A. I'm not aware of the exact number, but there were  
7 defaults.

8 Q. Would you look down at paragraph number 73, Mr. Debevc?

9 So you previously admitted that there were 126  
10 defaults, didn't you, Mr. Debevc?

11 A. That is correct. As I said, this is nine years ago.

12 Q. So there were approximately, in your view, approximately  
13 1400 loans in the 90% Stock Loan, and of those 1400 loans,  
14 126 loans went into default?

15 A. That is correct.

16 Q. You said it was nine years ago. There were so many  
17 defaults, it's hard to remember them all, isn't it, Mr.  
18 Debevc?

19 A. I have been involved in this process for six years. Yes,  
20 it is.

21 Q. Mr. Debevc, former 90% Loan customers who had their  
22 transactions defaulted on, they sued you for fraud, didn't  
23 they, Mr. Debevc?

24 A. Yes, they did.

25 Q. And those customers won and got a judgment against you?

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1 A. Yes, they did.

2 MR. COOPER: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. COOPER: 402, 403. It's not a final judgment.

5 MR. CLUKEY: That's exactly our point, Your Honor.

6 Goes to his credibility.

7 THE COURT: All right. It's okay. Overruled.

8 THE WITNESS: And that judgment is being appealed.

9 Q. So there is a judgment against you; is that correct?

10 A. There is a judgment against me and the company and all  
11 the other parties.

12 Q. And that judgment is for fraud; is that right?

13 A. Um, yes, sir.

14 Q. Mr. Debevc, I want to talk about some taxes of yours, or  
15 rather some taxes that you didn't pay.

16 For the years 2002, 2003, 2004, 2005, you paid \$0 in  
17 federal income taxes; isn't that right, Mr. Debevc?

18 A. I paid the social security tax and the Medicare taxes. I  
19 did not pay the income tax.

20 Q. You earned a good deal of money during that time, didn't  
21 you, Mr. Debevc?

22 A. Yes, I did.

23 Q. You didn't have to pay any taxes on any of that money?

24 A. Apparently, since I also had ownership participation in  
25 another entity, that the tax losses, according to

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1 accountants, those tax losses would be carried forward from  
2 my tax return.

3 Q. And those tax laws were for -- those tax losses were  
4 related to -- related to this company here, didn't it, Mr.  
5 Debevc?

6 A. Yes, they did.

7 Q. This company Shenandoah is a startup entity; is that  
8 right?

9 A. It, um -- yes, it was a startup company entity.

10 Q. So we've got startup entities, or startup companies here;  
11 we've got the names of some companies; this isn't all the  
12 startup companies; is that right? This is just some of them?

13 A. I think this is the majority of them. I don't recall  
14 which is missing.

15 Q. So we've got a company Aquilus, C3, Scienda, Charleston  
16 Aluminum, CCC -- which is Charleston Construction Company --

17 A. I believe so, yes.

18 Q. -- Steel Homes, Spray Foam and H2?

19 A. That is correct.

20 Q. These are primarily startup construction companies; is  
21 that correct?

22 A. They were involved in one aspect or another, one aspect  
23 of the construction business, with the exception of  
24 Charleston Aluminum.

25 Q. Shenandoah is a company you owned -- coowned?



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1 A. I beg your pardon?

2 Q. You coowned Shenandoah?

3 A. I was a coowner of Shenandoah, and the single portion is  
4 Derivium Capital, 25 percent, 50 percent Charles Cathcart and  
5 25 percent Scott Cathcart.

6 Q. So the ownership structure was the same for Derivium  
7 Capital and Shenandoah; is that right?

8 A. That is correct.

9 Q. And these companies were funded through the sales --  
10 through the proceeds of the sales of customer stocks in the  
11 90% Loan Program; is that right, Mr. Debevc?

12 A. They were funded through Spencer -- you see a company  
13 called Spencer Partners, and therefore, we directed. That is  
14 correct.

15 Q. Make sure I'm clear. The money to fund these companies  
16 came from the sale of customer stocks, the 90% Stock Loan; is  
17 that right?

18 A. Negative.

19 The -- the customers received 90 percent of the  
20 stock. The ten percent that was left over was part of the  
21 operating expenses and also the profit of -- and of the  
22 profit to the lender, so --

23 Q. Those companies got \$45 million, didn't they?

24 A. Yes, they did.

25 Q. That \$45 million came from the sale of customer stocks,

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1 didn't it?

2 A. Yes. From the ten percent that was left over.

3 Q. Okay. So it's \$45 million over to those companies, and  
4 somehow you get to generate losses for your tax returns;  
5 isn't that right?

6 A. Well, unfortunately, the majority of those companies  
7 failed, and there -- I'm not an accountant -- but therefore,  
8 the accountants said that they were losses.

9 Q. This is losses of \$45 million that happened was because  
10 you owned 25 percent of Shenandoah, you got to take roughly  
11 25 percent of that \$45 million as personal losses; is that  
12 correct?

13 A. Um, that was my understanding.

14 Q. Okay. It was 9 or \$10 million, something around there,  
15 something in that ballpark?

16 A. I think it was less than that, but...

17 Q. \$7, \$8 million, something like that?

18 A. Something to that effect.

19 Q. Now, did you ever personally have \$7 or \$8 million?

20 A. Never.

21 Q. But you got to take \$7 or \$8 million in losses on your  
22 personal tax returns; is that right?

23 A. Um, that is true. But the manufacturing business also  
24 never had money, that was operating losses.

25 Q. This is -- this is your personal tax returns, you are

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1 taking \$7 or \$8 million of money that you never had; is that  
2 correct?

3 A. I don't -- I'm -- the losses were flow-through losses  
4 that were accounted for by accountants. I am not an  
5 accountant. They were aware of these, this construction.

6 Q. Okay. Mr. Debevc, I would like to talk about the losses  
7 that you took in 2005.

8 MR. CLUKEY: If you could pull up Exhibit 297, which  
9 we would like to move into evidence, Your Honor. You already  
10 ruled on that --

11 THE COURT: Okay.

12 MR. CLUKEY: -- before the break.

13 THE COURT: All right.

14 (Thereupon, Government's Exhibit Number 297 was  
15 received in evidence.)

16 MR. CLUKEY: 297, page 58, please.

17 THE CLERK: That's in evidence, right?

18 MR. CLUKEY: Yes. It's in evidence.

19 THE CLERK: Okay.

20 MR. CLUKEY: So if we can go up to the top of the  
21 page there, highlight the 1040, the top part of the box.  
22 Come down.

23 Q. "Yuri Debevc. 2005."

24 This is your tax return; isn't that right, Mr.  
25 Debevc?

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1 A. That is correct.

2 MR. CLUKEY: Scroll out. And we go down. Can you  
3 highlight the box, basically the bottom half of the document?

4 Q. "Wages, salaries, tips."

5 Mr. Debevc, you made \$220,000 in 2005; is that  
6 right?

7 A. That is correct.

8 Q. Let's look at the amount that you paid. We've got --  
9 that's back on the front page. Oh, no, I'm sorry.

10 If you look down on where we just were, the prior  
11 page, if you look down in box 36, 37 down there, just do the  
12 whole "adjusted gross income."

13 This is your adjusted gross income, line 37 minus  
14 \$7 million. So \$7 million you never had; is that right, Mr.  
15 Debevc?

16 A. This was a pass-through loss. That is correct.

17 Q. You paid zero income taxes that year, 2005; is that  
18 right?

19 A. That is correct.

20 Q. Mr. Debevc, tell me, who is your accountant? Who  
21 prepared this return for you?

22 A. It was my CPA.

23 Q. Who is that? What's his name?

24 A. Robert Nagy.

25 Q. Robert Nagy.

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1 Robert Nagy said you could take \$7 million in  
2 losses, money that you never had; is that right?

3 A. He is a CPA who prepared -- based on the data that was  
4 available to him, he prepared the tax return.

5 Q. You trusted what Robert Nagy told you, didn't you?

6 A. Yes, I do.

7 Q. Mr. Debevc, I would like to go ahead a few pages --  
8 actually to page -- or back, sorry, back a few pages to page  
9 36 -- and I'll ask before we get there: In 2004 you made  
10 \$268,000; isn't that right?

11 A. That's probably correct.

12 Q. That's a pretty good year for you, wasn't it?

13 A. Yes, it was.

14 Q. Paid zero in taxes that year, didn't you?

15 A. That is correct. It was flow-through losses from the  
16 Shenandoah entities.

17 Q. Let's highlight the top box again.

18 Yuri Debevc, income tax return, 2004.

19 Down to the bottom, second half. See the bottom?  
20 It's your adjusted gross income, negative 8 million.

21 \$8 million you didn't have; isn't that right, Mr.  
22 Debevc?

23 A. That is correct. That was as a result of the  
24 flow-through losses from the Shenandoah entity.

25 Q. So you paid zero taxes in that year?

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1 A. That is correct.

2 Q. And who was your --

3 A. Other than the social security tax and the --

4 Q. FICA that's taken out automatically.

5 A. FICA. Those were all paid to the maximum.

6 Q. Who was your tax return preparer this year?

7 A. Robert Nagy.

8 Q. Can we highlight the preparer's -- on the bottom there,  
9 that's Mr. Nagy's signature on there, isn't it?

10 A. That appears to be, yes, Mr. Nagy's signature.

11 Q. 2002, 2003, paid zero in income taxes again; is that  
12 right?

13 A. That is correct. And I paid the FICA and the social  
14 security.

15 Q. Let me guess. Tax return preparer, Robert Nagy?

16 A. That is correct.

17 Q. Mr. Debevc, you met Robert Nagy around 1998; is that  
18 right?

19 A. Um, no, it was towards the end of 1998.

20 Q. And he did work for Derivium and Derivium-related  
21 companies for years, didn't he?

22 A. He was introduced as the CPA for the -- then for Security  
23 Capital.

24 Q. He was the CPA for First Security Capital way back in the  
25 beginning, right?

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1       A. I don't know about the beginning because I was not there  
2       at the beginning, but when I joined in towards the end of  
3       1998 or the beginning of 1999, I was introduced to Mr. Nagy,  
4       and at that time the entity was known as First Security  
5       Capital.

6       Q. And he was the -- he was the CPA for First Security  
7       Capital?

8       A. Yes, sir, the CPA for the firm.

9       Q. He was the CPA for Derivium Capital, wasn't he?

10      A. That is correct.

11      Q. He was CPA for Veridia, right?

12      A. That is correct.

13      Q. CPA, as far as you know, for Derivium USA?

14      A. I don't have any knowledge on that.

15      Q. You've got this company hanging out down here, FSC  
16      Canada. What was that?

17      A. That was a subsidiary that was formed at the end of year,  
18      sometimes in, I don't have the year recollection, either 2000  
19      or 2001, to explore the security of the 90% Stock Loan in  
20      Canada.

21      Q. It's a company that you owned, it's one of your subs?

22      A. I did not own it. I did not have any -- to the best of  
23      my knowledge, I had no participation in that company. I  
24      don't have information.

25      Q. You don't recall whether Derivium owned 100 percent of

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1 FSC Canada?

2 A. I do not recall the specific structure of that  
3 organization.

4 Q. Fair enough.

5 To your knowledge, Robert Nagy was the accountant  
6 for FSC Canada, wasn't he?

7 A. I cannot speak to that. I don't know.

8 Q. Mr. Nagy told you at one point in time that he considered  
9 Derivium to be his number one priority client, didn't he?

10 A. When you say that he told me that, I don't know that --  
11 whether he told me that or not, there might have been in some  
12 memo.

13 Q. Okay. Let's pull up Exhibit 200, which is in evidence.

14 Go to, if we could, the top half of the document.

15 From Charles Cathcart to Yuri Debevc. Let me see.  
16 FCI. "Re: Bob's loan. In dealing with same, please call me  
17 for feedback."

18 Look at the date there. It's December 17, 2003?

19 A. Correct.

20 MR. CLUKEY: If we scroll out and if we could  
21 highlight the bottom half of that document.

22 Q. We see Mr. Nagy's writing Charles Cathcart. He's talking  
23 about a loan in the amount that he owes to Shenandoah for  
24 \$142,000?

25 So Mr. Nagy has a loan from this company, one of



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1 your companies that you own, correct --

2 A. That is correct.

3 Q. -- for \$142,000.

4 And he says, that's the original principal amount  
5 without interest.

6 The next line below there and then the next line  
7 after that says: "The agreement called for an interest  
8 amount that was to be calculated based on a stated return  
9 from a project that I anticipated would provide significant  
10 returns."

11 If we go to the next page, let's highlight all that  
12 text.

13 And Mr. Nagy's proposing a deal here for you, isn't  
14 he?

15 A. The document speaks for itself.

16 Q. So he's owed some money from some of your own companies,  
17 right? He's done some work, it looks like, it says DC USA.

18 So that's Derivium Capital USA, right?

19 A. That is not a company that I had any ownership in.

20 Q. And Veridia, that's a company you had ownership in,  
21 right?

22 A. Small amount. 600 and some odd dollars.

23 Q. But he owed you some money or you owed him some money, it  
24 looks like, right?

25 A. Probably after tax operation or some service that we

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1 provided to the company.

2 Q. \$55,000, that's some tax preparation. Is that how you  
3 get \$7 million in losses that you don't really have?

4 A. Excuse me. Veridia was needed to pay a balance of 600  
5 some odd dollars. If you look at the first page at the  
6 bottom, I can only speak to that.

7 Q. Okay. Fair enough.

8 So he says here, we have -- if we look at the  
9 bottom, it's the bottom portion right there -- "We have not  
10 discussed the matter of interest on the note. Certainly, I  
11 am very appreciative of your assistance when I desperately  
12 needed it. From my standpoint, I have attempted to put your  
13 group in my number one priority position."

14 He's talking about the Derivium Group, right? This  
15 Derivium Group of companies; is that right?

16 A. That's what the document says.

17 Q. "Have hopefully been of significant assistance to you,  
18 and have billed my time at less than a standard rate,  
19 virtually since the inception of our relationship. I have  
20 continued to work on your accounts despite the financial  
21 problems and the datedness of some of the invoices. Taking  
22 all this together, I respectfully request that we forego  
23 interest on the balance owed."

24 He's asking you, I don't want to pay interest on  
25 this -- this \$142,000 loan; is that right?

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1       A. Excuse me, sir. This document was directed to Mr.  
2 Cathcart and Mr. Cathcart send that to me only for -- for  
3 your information.

4       Q. Well --

5       A. I was not part of the -- let me finish.

6       Q. Sure.

7       A. I was not part of this discussion. And this document is  
8 directed at Mr. Cathcart, who was the principal owner of the  
9 company, and that he made this loan arrangement with Mr.  
10 Nagy. And now --

11       Q. Mr. Cathcart made the loan arrangements directly with Mr.  
12 Nagy; is that right?

13       A. That would be my belief.

14       Q. Let's look at the bottom. Please review this proposal.  
15 "Discuss it with Yuri"?

16       A. And Scott. He's asking to discuss this proposal with the  
17 owners of Derivium.

18       Q. So Mr. Nagy is sending this to Charles Cathcart, asking  
19 him to discuss it with you and Scott. "Best regards, Bob,"  
20 right?

21       A. That's what this says. However, this document, this  
22 request, was initially directed at Charles Cathcart and  
23 Charles Cathcart then shared it with us.

24       Q. If we go back to the first page. The very top again.

25               "FYI. Please call me with feedback."

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1                   And it's directed to Yuri Debevc. So you got this  
2 document, right, Mr. Debevc?

3           A. Yes, I did. I'm not denying that I did not get it.

4           Q. And after this time -- this document was in 2003 -- after  
5 this time, Mr. Nagy continued to work on the 90% Loan scheme,  
6 didn't he?

7           A. Um, what you call -- what you mean by --

8           Q. He continued to be -- he continued to be involved, he  
9 continued to provide tax memos; do that type of stuff; is  
10 that right?

11          A. I believe there were some tax memos that were related  
12 after those days.

13          Q. Actually, he continued to work on the 90% Loan scheme  
14 well into 2005, didn't he?

15          A. I think that there were some memos that are dated 2005,  
16 correct.

17          Q. And he got paid even after -- they got paid in 2005. He  
18 was profiting off of the 90% Loan scheme in 2005, wasn't he?

19          A. I would have to take a look at the records, what he was  
20 paid or what he was not paid in 2005.

21          Q. Let's pull up Exhibit 193, please.

22                   Mr. Debevc, is that your signature on this check?

23          A. That is correct.

24          Q. What's Meridian Services Ltd.?

25          A. It is the legal end of that Bob Nagy owned.

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1 Q. It's Bob Nagy's company?

2 A. Bob Nagy's company.

3 Q. How much is this check for, Mr. Debevc?

4 A. \$20,000.

5 Q. What is this check dated?

6 A. The check is dated March 1, 2005.

7 Q. You see in the side there, "Check applied as follows,  
8 Derivium, \$8,849 dollars," caps S. What's that?

9 A. I --

10 Q. Is that Scott Cathcart?

11 A. I don't know. That is not my handwriting, sir.

12 Q. Okay. "Debe." Is that you, Debevc?

13 A. I don't know.

14 As I said, this is not my handwriting. I did not  
15 make those notations. The individual that made those  
16 notations should be able to describe them to you.

17 Q. You think it might be you, though, Debbie?

18 A. Possible.

19 Q. Debevc?

20 A. It's possible, \$685.

21 Q. Shenandoah. That's Shenandoah, right, "S H E N,"  
22 Shenandoah?

23 A. That's speculation, but it would seem reasonable.

24 Q. CDC, Charles Cathcart, right?

25 A. Right.

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1 Q. "Scien," Scienda. That's Scienda, right?

2 A. That would -- that -- as I said, the individual that made  
3 those notations should be able to explain what those  
4 notations are.

5 Q. Robert Nagy also continued to do work for other companies  
6 after this, other companies related to the 90% Loan scheme,  
7 didn't he?

8 A. Which other companies would that be?

9 Q. Bancroft?

10 A. I would not know. I wouldn't see any.

11 Q. Actually, Mr. Debevc, you paid Robert Nagy for work on  
12 Bancroft, didn't you?

13 A. It is -- I paid, as a matter of course of operations, we  
14 paid many invoices. You would have to refresh my memory.  
15 It's possible. But as I said, during the span of ten years,  
16 many courses were paid.

17 Q. You paid Mr. Nagy for work in Bancroft in 2005, at least  
18 in 2005, didn't you?

19 A. I don't recall such a payment, but if you have a document  
20 that shows that, it's very possible that we did.

21 Q. I'm going to show you something in just a second. "DDA  
22 Ireland." That was a supposed lender in this scheme, wasn't  
23 it?

24 A. That was a lender that was in place before I joined the  
25 company.

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1 Q. Okay. Then it went away, right?

2 A. The DDA, I imagine under the circumstances of the  
3 transfer, sold the portfolio to Bancroft Ventures. I don't  
4 know the financial terms.

5 Q. We are going to get into that a little bit later, but  
6 then Bancroft becomes the supposed lender in this scheme;  
7 isn't that right?

8 A. Bancroft, to the best of my knowledge, was the lender.

9 Q. Okay. WITCO. That was another supposed lender in the  
10 scheme, wasn't it?

11 A. I believe that they did maybe half a dozen for ten  
12 months.

13 Q. Optech, another supposed lender in the scheme?

14 A. It was a lender in Hong Kong.

15 Q. Optech is in Hong Kong, is that right? You just said  
16 that.

17 A. That's correct.

18 Q. WITCO is in the United Kingdom?

19 A. That is correct. That's my belief. I don't know that  
20 that is correct, but that's my belief.

21 Q. Bancroft is in the Isle of Man?

22 A. Um, Bancroft is in Isle of Man, whether the entity that  
23 we dealt with in Charleston was the Bancroft Ventures in  
24 United Kingdom.

25 Q. And DDA was in Ireland; is that right?

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1 A. Um, DDA?

2 Q. Supposedly.

3 A. The point of contact for DDA was an attorney by the name  
4 of Cliff Lloyd.

5 Q. An attorney by the name of Cliff Lloyd?

6 A. Correct.

7 Q. He was your contact person for this Irish company, DDA?

8 A. Correct.

9 Q. Cliff Lloyd was also an employee of Derivium Capital,  
10 wasn't he?

11 A. He was. It is my understanding that, not Derivium  
12 Capital, but First Security Capital, he was one of the  
13 members of First Security Capital before I joined.

14 Q. He was an owner of First Security Capital, wasn't he,  
15 Cliff Lloyd?

16 A. I believe so.

17 Q. And he's also the point of contact for this company,  
18 isn't he?

19 A. I believe so, but -- I don't know the relationship there  
20 between Cliff Lloyd, but he was a point of contact for that  
21 lender.

22 Q. Actually, he formed this company, didn't he?

23 A. I don't have any knowledge about that.

24 Q. You think he did, don't you?

25 A. I don't know.



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1 THE COURT: This might be a good time to take a  
2 morning break because Amy has been going about an hour and a  
3 half.

4 MR. CLUKEY: Perfect, Your Honor.

5 THE COURT: Ladies and gentlemen, go to the jury  
6 room and relax and we'll start again in about 15 minutes.

7 (Thereupon, the jury retired from the courtroom.)

8 THE COURT: Start again at quarter till.

9 (Thereupon, there was a brief recess.)

10 THE COURT: All right. Anything before we bring the  
11 jury back in?

12 MR. COOPER: My concern is on that 801 objection  
13 where he said, Your Honor, he said conspiracy on the ruling  
14 and then you overruled the objection, I mean, that -- the  
15 jury, from my point of view, took that to mean that you ruled  
16 there was a conspiracy and --

17 THE COURT: You want me to declare a mistrial and  
18 we'll start over again?

19 I think it was -- if it happens again, just cite the  
20 Rule, and we'll do the 802, whatever it is, 802(2)(1)(e).

21 MR. COOPER: I mean, I just find that highly  
22 prejudicial coming out of --

23 THE COURT: Okay. So I mean, there is two things  
24 you can do.

25 One of the things, you can ask me to instruct the

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1 jury that when I use the term "conspiracy," it doesn't mean  
2 anything and it's not pejorative or anything, which  
3 highlights it to the jury, or you can figure out that they  
4 just blew it off, kind of an aside.

5 You let me know what remedy you want me to do and  
6 I'll consider doing it, but you don't have to do it right  
7 now.

8 MR. COOPER: Okay. I just -- thank you.

9 THE COURT: But don't -- don't use that word again,  
10 okay?

11 MR. CLUKEY: I'm sorry, Your Honor. I couldn't  
12 remember the specific rule, that's why I tried not to use it.

13 THE COURT: 801(d)(2)(E), I think, all right?

14 MR. SEACORD: There are a number of exhibits that we  
15 can either agree with Mr. Cooper or there is no objection to;  
16 or like yesterday, it was Mr. Debevc that objected, and we  
17 would like to read them in, five of them.

18 THE COURT: Okay.

19 MR. SEACORD: Government Exhibits 3, 43, 60, 81, 87,  
20 90 and 101.

21 (Thereupon, Government's Exhibits 3, 43, 60, 81, 87,  
22 90 and 101 were received in evidence.)

23 MR. COOPER: What was the last one?

24 MR. SEACORD: 101.

25 MR. COOPER: I have an objection to 101.

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1 MR. CLUKEY: We just resolved that.

2 THE COURT: Okay. So 3, 43, 60, 81, 87, 90 and 101  
3 in evidence without objection. Okay. Bring them in.

4 (Thereupon, the jury returned to the courtroom.)

5 THE COURT: Okay. Mr. Clukey?

6 MR. CLUKEY: Thank you, Your Honor.

7 Q. Mr. Debevc --

8 A. Let me just check the court reporter that this -- she can  
9 hear me well.

10 Q. Mr. Debevc, when we left off, you were telling us about  
11 DDA, FSC and a gentleman by the name of Cliff Lloyd.

12 Q. Cliff Lloyd was a former owner of FSC Capital, or I'm  
13 sorry, First Security Capital?

14 A. I believe so, and he was also an attorney.

15 Q. And he was your point person for DDA. You knew that much  
16 about him, right?

17 A. He was the one that had the relationship with DDA. That  
18 is what was --

19 MR. CLUKEY: Can you pull up Exhibit 45 in evidence?

20 Q. Look at the top half of this document, please.

21 This is one of Robert Nagy's tax memos that he  
22 provided to Derivium, isn't it?

23 A. Um, I'm not sure that I saw all the tax memos, but it  
24 appears that from the tax, that it appears that.

25 Q. And we see up in -- who is this addressed to? Dr.

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1 Charles Cathcart. And what's the name there right below Dr.  
2 Charles Cathcart?

3 A. Clifford Lloyd, Esq., company counselor and director of  
4 legal services.

5 Q. I asked you if he was an employee earlier of Derivium  
6 Capital and he was, wasn't he, Cliff Lloyd?

7 A. Well, I think at that time he was still a member of  
8 Derivium Capital.

9 Q. So he was an owner of Derivium Capital? He wasn't an  
10 employee; he was an owner?

11 A. I believe -- I am not the legal expert, but it certainly  
12 appeared that way, yes.

13 Q. Okay. That's DDA Bancroft. Bancroft takes over for DDA.  
14 You just mentioned that a few minutes ago.

15 A. That is correct.

16 Q. And then Bancroft is the supposed lender really until  
17 sometime in 2005, right?

18 A. Um, yes, in 2005.

19 Q. And you were here in the courtroom, weren't you, when you  
20 heard the testimony that was read from Colin Bowen?

21 A. Yes, I was.

22 Q. And you heard that Colin Bowen testified that he was no  
23 longer a director as of April, 2005. You heard that, right?

24 A. That's the best -- I think that's what I --

25 Q. April 2005.

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1                   So Colin Bowen, the real guy, Bancroft in the Isle  
2 of Man, you already testified Bancroft didn't do anything,  
3 you heard that, right?

4           A. I heard that Bancroft -- I heard that he testified that  
5 Bancroft Isle of Man did not do anything.

6           Q. Right.

7           A. He did not mention anything of Bancroft U.K.

8           Q. Bancroft Isle of Man didn't do anything, you already said  
9 that, right?

10          A. That was his testimony.

11          Q. Now, Mr. Debevc, did you ever live in the Isle of Man?

12          A. I've never visited the Isle of Man. I have never been to  
13 the Isle of Man.

14          Q. You've never visited there; you've never lived there?

15          A. No, I did not.

16          Q. To your knowledge, did Mr. Nagy ever think you lived in  
17 the Isle of Man?

18          A. I have no basis to believe that.

19          Q. You don't think he thought you lived in the Isle of Man,  
20 do you?

21          A. I don't think so.

22                   MR. CLUKEY: So can we pull up Exhibit 194, please?  
23 It's in evidence.

24          Q. Mr. Debevc, is that your signature?

25          A. That is my signature.

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1 Q. Veridia Services, you testified earlier, that's Bob  
2 Nagy's company, isn't it?

3 A. That is correct.

4 Q. This is a check for \$10,000, you would agree with that?

5 A. That is correct.

6 Q. Let's look at the top.

7 Who are the checks from, Bancroft Ventures Ltd.,  
8 Ioma House, Hope, Douglas, Isle of Man?

9 A. That is correct.

10 However, may I point out something? This check is  
11 from First Union Bank. This was a domestic bank account  
12 which the attorneys for Bancroft Ventures would instrument in  
13 opening and giving us signature authority on that account.

14 Q. This isn't really a check from the Isle of Man, is it,  
15 Mr. Debevc?

16 A. It is not a check from the Isle of Man.

17 As you can see by the issuing bank by First Union  
18 National Bank, and that is a domestic bank in the United  
19 States.

20 Q. But the address on the check is Bancroft Ventures, Isle  
21 of Man, you agree with that?

22 A. Yes, I do.

23 Q. And it's issued to Bob Nagy's company, Meridian Services,  
24 for \$10,000. Let's look at the date on the check. 6-15-05.

25 A. That had to be an invoice and that invoice had to be

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1 approved by somebody.

2 Q. We know Colin Bowen is not there anymore, don't we? You  
3 just testified he was gone in April of 2005.

4 Colin Bowen didn't approve it, did he?

5 A. I was not aware of that in April, in June of 2005.

6 Q. And that's your signature on the check, right? You wrote  
7 this check?

8 A. That's correct.

9 Q. Mr. Debevc, I would like to show you Exhibit 40.

10 You were here when Mr. -- when Mr. Bowen testified  
11 about this document, weren't you?

12 A. Yes, I was.

13 Q. Now Mr. Debevc, you've told me in the past during one of  
14 your depositions that you knew this -- about this document,  
15 right? You saw it in the past?

16 A. I saw it in the past and it was provided to me by the law  
17 firm for Bancroft and Derivium, 10 State Street.

18 Q. You saw it in 2003; isn't that right?

19 A. I do not recall the exact date, but I'm sure that the  
20 record is -- the records which I testified is correct, but I  
21 don't -- I can't recall the exact date right now.

22 Q. You think 2003 is probably right?

23 A. It's very possible. It could have also been in 2002.

24 Q. 2002/2003. Okay.

25 So Mr. Bowen, say the first time he saw this

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1 document, was in 2008?

2 A. I can't speak to what Mr. Bowen saw or not. This  
3 document was provided to me by the attorneys for Bancroft, 10  
4 State Street, and Mr. Tim Scrantom.

5 Q. Attorneys for 10 State Street?

6 A. Attorneys for Bancroft Ventures, their law firm of 10  
7 State Street.

8 Q. 10 State Street. I would like to talk about that.

9 10 State Street, were they located over here, in  
10 Ireland or the Isle of Man?

11 A. No, they were located here in Charleston.

12 Q. Here in Charleston.

13 And they were Bancroft's lawyer, right?

14 A. They were attorneys for Bancroft. To the best of my  
15 knowledge, they were attorneys for Bancroft and they  
16 presented themselves as such.

17 Q. They were also attorneys for Derivium Capital, weren't  
18 they?

19 A. They were also attorneys for Derivium Capital.

20 Q. Same attorneys?

21 A. That is correct.

22 Q. So you heard Mr. Bowen testify this document was a  
23 complete fabrication. You heard that, right?

24 A. That's what I heard.

25 Q. You didn't authorize this picture to be used in this



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1 document.

2 You heard him say that, didn't you?

3 A. I had no knowledge how this document was produced.

4 Q. But you knew about it; you saw this document in  
5 2002/2003?

6 A. I saw it on the website.

7 As a matter of fact, I -- you could have this copy  
8 from my files because I copied it in my files.

9 MR. CLUKEY: I would like to pull up Exhibit 189,  
10 please. 10 State Street.

11 It's in evidence.

12 Q. Take a look at this document, Mr. Debevc.

13 A. Yes, sir.

14 Q. From Robert Nagy, Yuri Debevc, 7-14, 2005, proposal from  
15 Mr. Nagy to you; is that right?

16 A. That is, that is correct.

17 Q. I want to -- before we talk about it, a little context,  
18 July of 2005. July 2005.

19 You testified earlier customer defaults in 2001,  
20 customer defaults in 2002, by July of 2005, there were a  
21 whole bunch of customer defaults, weren't there, in the 90%  
22 Loan stock program?

23 A. There were at that time, to the best of my recollection,  
24 12 or 13.

25 Q. 12 or 13. And ultimately, there were 126? You testified

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1 to that earlier?

2 A. Right. That occurred after Derivium, those numbers --

3 Q. July 2005, is that the only thing going on now, right?

4 You are getting sued by customers, correct?

5 A. Um, not -- not in July.

6 Go ahead.

7 Q. Well, you were sued before -- you were sued before this,  
8 right?

9 A. The company was sued before.

10 Q. The company was sued before, okay.

11 Not you personally; Derivium Capital is being sued  
12 now, right?

13 A. Correct.

14 Q. And there is other litigation that's going on, there is  
15 other government entities that are litigating with you right  
16 now, 2005, California Department of Corporations, for  
17 example?

18 A. Um, that was -- that's still an ongoing case.

19 Q. And so Mr. Nagy's giving you a proposal.

20 "Yuri, the proposal is attached. It's not fancy,  
21 but I believe it encompasses our discussions. Please review  
22 with John and let me have any comments or changes. Perhaps  
23 you can give me a call after you both have reviewed it and we  
24 can nail it down that way."

25 Let's flip ahead and see what this proposal is.

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1 "Current situation - FRN transactions generate  
2 approximately \$100,000 per quarter" -- it looks like --  
3 what's an FRN?

4 A. That was a floating rate note that where the -- there are  
5 certain interest payments that are generated on a quarterly  
6 basis.

7 Q. Floating rate notes, it's kind of like a bond, right?

8 A. Not quite, but it's a specialized instrument that was  
9 developed many years ago.

10 Q. So you got stocks. Everyone knows what stocks are. Then  
11 you've got this other thing?

12 A. Which is essentially a corporate paper.

13 Q. It's a corporate paper?

14 A. Essentially a corporate paper.

15 Q. But it's similar to a bond, you are going to get an FRN,  
16 and you are going to get payments over a period of time, like  
17 bonds, bonds payoff; is that right?

18 A. More or less.

19 Q. Similar, yeah.

20 So the 90% Stock Loan, you used basically two  
21 things, one was for stock transactions, customers producing  
22 stocks, those are -- most of the transactions was stock,  
23 right?

24 A. That would be the dominant share of business  
25 transactions.

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1 Q. And you also had this other market you started to develop  
2 with FRN transactions, correct?

3 A. That is correct.

4 Q. "Tentative Proposal To Continue FRN Administration  
5 Support."

6 "Current situation - FRN transactions generate  
7 approximately \$100,000 per quarter."

8 That's for Derivium, right, generated \$100,000 a  
9 quarter?

10 A. Negative. That was generating for the lender, Bancroft.

11 Q. Okay. It was part of the scheme, it was generating  
12 \$100,000 a quarter; is that correct?

13 A. You continue to refer to this as "a scheme". To the best  
14 of my knowledge, Bancroft was a legitimate lender.

15 Q. Okay. Generating \$100,000 for the -- this -- whatever  
16 you want to call it -- hundred thousand dollars is coming in;  
17 is that right?

18 A. That is correct.

19 Q. And this is an assured cash flow for a potential 30 to  
20 40 years. Wow. \$100,000, 30 to 40 years?

21 A. This is only assured as long as the clients or customer,  
22 or whoever is the borrower, is willing to pay the interest;  
23 and also obviously depends on the tenor of the loan. And  
24 these loans were, in fact, between 17 and 28 years, but not  
25 40 years, as you suggest.

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1 MR. CLUKEY: If we can scroll out. And actually, if  
2 you could just blow up that section and see a little bit  
3 more.

4 "Veridia Solutions has terminated its relationship  
5 with Bancroft."

6 Q. Okay. So we are in July of '05. What's the date of this  
7 document -- sorry.

8 First page. July 14th, '05, right? In July.

9 "Veridia Solutions has terminated its relationship  
10 with Bancroft. This means no entity is in place to service  
11 the FRN loans. Veridia is generating statements for the  
12 second quarter of 2005 in the next day or so. Once that is  
13 completed, Veridia's services are completed."

14 "The FRN borrowers will be remitting interest  
15 payments as soon as their statements are received. No  
16 structure or designated entity is in place to receive the  
17 payments. Borrowers will be concerned about going into  
18 default, and there will not be any point of contact. My  
19 current understanding is that an address and phone number is  
20 Cyprus has been provided, but there is no response."

21 If we can scroll out. And this bottom half.  
22 Starting with, "If there is no address."

23 "If there is no address to which payments will be  
24 sent or forwarded, I assume that the payments will be  
25 returned."

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1                   So that means a hundred thousand dollars for 30 to  
2                   40 years, something doesn't happen, that money is going to go  
3                   back, customers are -- the way this is working with the  
4                   FRN's, people are sending in interest payments to part of  
5                   their --

6                   A. Well, people would be hand -- sending in the interest  
7                   payments, which we deposited in the lender's bank account.  
8                   And obviously, Veridia severed the relationship with  
9                   Bancroft.

10                  Also in mid-summer, in June, July, Bancroft is its  
11                  last act. It sent out second, I believe, second quarter  
12                  statements. And then with all the documentation in public  
13                  storage, and that was the end of the relationship between  
14                  Veridia and Bancroft.

15                  Q. Okay. So Veridia is doing this July, 2005?

16                  A. And the reason that Veridia severed their relationship  
17                  with Bancroft is because the two would not get responses for  
18                  Bancroft in the responsibility of borrowers' inquiries.

19                  Q. The FRN's -- the question I want to ask -- the program  
20                  worked basically the same way: You've got stocks, you've got  
21                  FRN's, those both came in to Derivium and then the stocks  
22                  were sold and the FRN's were sold, too, right?

23                  A. The FRN's were also sold; however, the pricing mechanisms  
24                  would be --

25                  Q. But they were sold?

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1 A. That is correct.

2 Q. And so now customers, they don't know their FRN's had  
3 been sold and they are remitting payments in to the program,  
4 right?

5 A. However, unlike the stock, the floating rate notes never  
6 appreciate in value.

7 Q. So there is no hope for appreciation of a floating rate  
8 note, is there?

9 A. It is, because essentially, the difference and the tenor  
10 of the loan was before the maturity of the commercial date.

11 Q. Now, I know you are not an accountant, but you are aware  
12 that because there are FRN's and they are structured  
13 differently when they are sold, there are even bigger tax  
14 problems with selling an FRN, weren't there?

15 A. I'm not aware of -- I did not deal with tax matters on  
16 that -- on those loans.

17 Q. Now, Derivium was told by Robert Nagy that there were  
18 serious problems with selling an FRN, didn't they?

19 A. I saw memos that were addressed to Charles Cathcart that  
20 were shared, and the Government, that were shared with me.

21 Q. So Robert Nagy wrote memos to Charles Cathcart saying  
22 there is problems with selling these FRN's and those were  
23 shared with you?

24 A. That is correct.

25 Q. Well, what kind of proposal are we talking about here?

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1                   This is Robert Nagy's proposal to you, right?

2           A. This is not Robert Nagy's proposal, essentially to  
3 Veridia, rather than he is addressing me as Veridia.

4           Q. Okay. What is it? What's he doing here?

5           A. The meaning of this proposal would be to have -- to  
6 continue to service this, um -- this -- the document says the  
7 former company which will continue to serve as the floating  
8 rate note business.

9           Q. Robert Nagy's proposing to you to form another company,  
10 we don't have enough companies here, right? "Let's form  
11 another company, then we can service these FRN's that are  
12 sold that are problematic from the tax laws."

13                   Robert Nagy is proposing that to you. Did you take  
14 him up on his offer, Mr. Debevc?

15           A. Not at that time did it materialize.

16           Q. You said no thanks?

17           A. No. That is correct.

18                   MR. CLUKEY: I would like to pull up Exhibit 101,  
19 please -- I'm sorry -- can we go back to that one second? We  
20 can just do "The proposal," just the top part.

21                   "Newco will be formed immediately and will contract  
22 with BVL and probably Optech also" -- Optech on here on the  
23 chart -- "to continue loan administration. Newco will be a  
24 domestic entity and will perform loan administration related  
25 strictly to FRN transactions."



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1 If you pull up Exhibit 101. Okay. Top there.

2 "Robert Nagy, Certified Public Accountant, to Cliff  
3 Lloyd. Cliff Lloyd, FSC, DDA, Derivium Capital, Cliff  
4 Lloyd."

5 We talked about that earlier, correct?

6 A. That -- this is our 1999, the top priority was sometime I  
7 think in 2003 or '4.

8 Q. Okay. But Cliff Lloyd is the same guy we were just  
9 talking about, right?

10 A. He is the same individual.

11 Q. Tim Scrantom. Who is Tim Scrantom?

12 A. Tim Scrantom is the principal attorney for 10 State  
13 Street.

14 Q. 10 State Street, the firm that you just mentioned  
15 representing Derivium Capital?

16 A. The law firm represented Derivium Capital and also  
17 represented Bancroft.

18 Q. It also represented Bancroft.

19 It also represented Optech, didn't it?

20 A. I am not aware of their representation of Optech, but I  
21 believe so.

22 Q. Represented WITCO, too, didn't it?

23 A. I believe so.

24 Q. Represented Spencer, didn't it?

25 A. I believe so.

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1 Q. Represented Shenandoah?

2 A. I believe -- I believe so.

3 Q. So Tim Scrantom's a lawyer at 10 State Street  
4 representing all these companies; is that correct?

5 A. That is correct.

6 Q. And Robert Nagy's writing Cliff Lloyd and Tim Scrantom  
7 and Bob Brandenburg.

8 Who is that?

9 A. Bob Brandenburg was the internal accounting person for --  
10 for First Security Capital, Derivium Capital after the name  
11 changed.

12 Q. Okay.

13 MR. CLUKEY: Can we zoom out? Go to the next page,  
14 please. If you just blow up "the tax".

15 Q. Robert Nagy is writing to Cliff Lloyd from Bob Nagy,  
16 1999?

17 "Meeting issues. I thought I would get this out to  
18 you today."

19 And then the next paragraph says: "I think that we  
20 should plan to conclude the meeting with a firm plan in  
21 place. The current structure is fraught with problems. The  
22 longer it continues, the more transactions pile up in this  
23 problematic entity. Not only do we need to untangle the past  
24 to the extent possible, but we need to design the proper  
25 structure in which to move forward for the future. We want

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1 to be sure that the new structure is in place and ready to go  
2 by the end of the year."

3 Mr. Debevc, were you directly involved in this? You  
4 know this is talking about restructuring DDA, right?

5 A. I, um -- Mr. Clukey, I believe that I told you that at  
6 that point in time I was an employee not privy to these  
7 discussions. I was still an employee for Security Capital,  
8 and I became an owner sometime in the very late 1999 or 2000.

9 So this discussion was for -- because I became an  
10 owner, a minority owner, as Cliff Lloyd left the firm.

11 Q. Okay.

12 A. So --

13 Q. So -- but you are working at Derivium Capital at that  
14 time?

15 A. I'm strictly as an employee, and this document would not  
16 have been shared with me.

17 Q. So Cliff Lloyd is an owner, he leaves, you step in as an  
18 owner after this; is that right?

19 A. As a minority. I receive a minority ownership position.

20 Q. Okay. So Robert Nagy here is proposing how to  
21 restructure what's going on. He says down below: "Review of  
22 the discussion Tim and I have had and the problems we see  
23 with the current structure."

24 And the number two. "Desired relationship between  
25 FSC, and DDA."

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1                   Review of information requested my 10-3-99 memo to  
2                   you. (We need this information in order to know exactly what  
3                   has transpired in the past, and what information is on file  
4                   with the different government entities."

5                   What's FSC Texas?

6                   A. It is my understanding that prior to First Security  
7                   Capital South Carolina in 1997, there was an entity called  
8                   First Security Capital Texas where some of the first loans  
9                   were generated.

10                  Again, this was all done prior to my joining the  
11                  firm and so this is what I heard, but I don't know that to be  
12                  a fact.

13                  Q. Discussion of FSC South Carolina, transfer of  
14                  assets/business from FSC Texas, ownership structure,  
15                  separation from DDA."

16                  So it's your testimony that you weren't involved in  
17                  all this, but Bob Nagy was doing it at this point in time;  
18                  helping to restructure the company.

19                  You weren't even involved that deeply because you  
20                  were just employed while Bob is doing all this; is that  
21                  right?

22                  A. That is correct.

23                  MR. CLUKEY: Pull up Exhibit 223, please.

24                  Robert Nagy, a little later now, July 3rd.

25                  Now, you are an owner of Derivium Capital at this

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1 point in time now, right? July 2000?

2 A. I don't know exactly the date, but I bet it would be year  
3 2000 that I became an owner. I don't know whether on  
4 July 3rd I was already the owner or not.

5 Q. Okay. And so Mr. Nagy is writing to Charles Cathcart:  
6 "Action items for DDA, Optech." Let's scroll out. Let's see  
7 what he's talking about here.

8 "I met with Tim Scrantom" -- that's the lawyer who  
9 represents all these entities we were talking about earlier,  
10 right -- "this morning to discuss in detail the finite steps  
11 to be taken to conclude the restructure.

12 "The items the three of us need to focus on are  
13 listed below. After each item, I have noted the initials of  
14 the individuals who should handle each item.

15 "Item one. We need to schedule and identify all  
16 existing customer accounts. These include not only the  
17 brokerage accounts but any bank accounts or other accounts on  
18 Derivium's books that hold accounts for assets belonging to  
19 DDA.

20 "Open new broker accounts to receive existing  
21 collaterals, collateral securities."

22 MR. CLUKEY: Go back up to one.

23 Q. "RJN."

24 That's Robert J Nagy; is that right?

25 A. Um, that's what I would believe, yes.

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1 Q. And so we are looking at two.

2 "Open new broker accounts to receive existing  
3 collateral securities. The existing brokers will be  
4 contacted after Tim drafts model letter to be given to each  
5 broker explaining the transition, and after Optech receives a  
6 federal I.D. number."

7 Optech. That's the Hong Kong company, right?

8 A. That is correct.

9 Q. "CDC". Is that Charles Cathcart?

10 A. That is correct.

11 Q. "YD". Of course that's you, right, Yuri Debevc?

12 A. That is correct.

13 Q. "CWL". Cliff Lloyd, is that right?

14 A. That's what I would imagine, that those are his initials.

15 Q. Okay. Number three. "Apply for federal I.D. number for  
16 Optech. RJN." That's Robert Nagy. We saw this was a  
17 July 2000 memo.

18 Robert Nagy's the guy who applies for a federal I.D.  
19 number for Optech in the United States, correct?

20 A. That is what -- the document speaks for itself.

21 Q. It does this in 2000.

22 Is Optech starting to get involved in this program  
23 in 2000?

24 A. No, it does not.

25 Q. When does Optech get involved in this program?

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1       A. Um, Optech, if my memory serves me correctly, the first  
2       loans for Optech were sometime in 2003.

3       Q. Item number five. "Deliver old loan documents to  
4       Optech." Old loan documents in quotes. Your name is by  
5       that.

6               There were no old loan documents for Optech because  
7       Optech hadn't been created yet?

8       A. That is correct.

9               And I also wanted to point out that this is a  
10       proposal by somebody designating names that would wish that  
11       those people would be doing those things. That was not  
12       necessarily the fact that the memo was followed.

13       Q. Good point.

14               Who was this proposal by?

15       A. This proposal is by Tim Scrantom.

16               MR. CLUKEY: Let's back out again.

17       Q. Who is on the letterhead at the top of this memo here?

18       A. Robert J. Nagy.

19       Q. This is Robert J. Nagy's proposal, isn't it?

20       A. I don't know whether it's his proposal or an  
21       expression of -- it suggests, meaning that Tim, Tim Scrantom,  
22       that it is an expression of that meeting.

23       Q. At a minimum, you would agree that Robert Nagy is  
24       participating in the formation of Optech. You would agree  
25       with that, wouldn't you?

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1       A. I don't know what involved -- the document speaks for  
2       itself -- I don't know what is involved in the company.

3       Q. The document speaks for itself?

4       A. Correct. "Identify other accounts existing or needed for  
5       the transition from DDA to Optech. RJN. Make sure that the  
6       terms of the marketing administration agreement between DDA  
7       and Derivium, then FSC, has been reduced to writing. RJN."

8               I want to talk about that for a minute.

9               The terms of the Marketing Administration Agreement  
10       between DDA and Derivium, there is no such agreement at this  
11       point in time; it's got to be reduced to writing, correct?

12       A. Well, that's what the document suggests. I did not see  
13       such an agreement.

14       Q. Right. That's right.

15               The document suggests that you didn't see such an  
16       agreement; is that correct?

17       A. That is correct.

18       Q. And who is going to participate in that?

19       A. The initials that are shown are Charles Cathcart and RJN  
20       and completed with Cliff Lloyd and Tim Scrantom.

21       Q. So Robert Nagy is going to help create a document that  
22       doesn't exist between a company that doesn't exist then, FSC,  
23       it's gone, it's now Derivium Capital.

24               Is that correct?

25       A. That's what the document suggests.



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1 Q. So the date on this document is July 3rd.

2 MR. CLUKEY: Can we get a copy of Exhibit 185? It's  
3 not in evidence. Can you pull up 185?

4 THE CLERK: 185.

5 MR. CLUKEY: Let's do the bottom half, pull it up.  
6 I'm sorry. Go back at the top.

7 Q. So Mr. Debevc --

8 A. Yes.

9 Q. -- this says "To Yuri Debevc" is on there?

10 A. Yes. This was a forwarding of a memo from Charles  
11 Cathcart to Scott Cathcart and Yuri Debevc.

12 Q. And this would have been received by you July 5, 2000.

13 So a couple days after that, Robert Nagy's memo we  
14 just saw on this transition --

15 A. That is correct.

16 Q. -- DDA transition?

17 MR. CLUKEY: I would like to move this document into  
18 evidence.

19 MR. COOPER: 402, 403 objection.

20 MR. CLUKEY: It's concerning matters that Mr. Nagy  
21 just wrote that memo about two days earlier, the same topic.  
22 And what it's explaining is some of what's going on behind  
23 the scenes and some of the people that are involved.

24 MR. COOPER: Mr. Nagy is not on the --

25 THE COURT: I don't think -- it's not the exception

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1 we talked about earlier. I don't see -- what does it more or  
2 less make a problem in this case? I mean, it's not --

3 MR. CLUKEY: It's not actual knowledge, Your Honor,  
4 it's what Mr. Nagy had reason to know.

5 THE COURT: But Mr. Nagy -- I don't know how you  
6 connect it with Mr. Nagy, number one.

7 Number two, the bulk of that memo is not anybody  
8 that we've ever heard of before.

9 MR. CLUKEY: Right. That's what I want to talk to  
10 Mr. Debevc about. Do you want me to lay the foundation?

11 THE COURT: So I'll sustain the objection right now,  
12 and when you move it back into evidence, we'll see, okay?

13 Q. Look at the bottom half, Mr. Debevc.

14 Who is David Kekich?

15 A. David Kekich was, I think, one of the original founders  
16 of First Security Capital, but I don't know that it was First  
17 Security Capital Texas or First Security Capital South  
18 Carolina.

19 Q. But you know that David Kekich was involved in some  
20 manner with FSC, whether it was FSC here in South Carolina,  
21 in Charleston, or FSC in Texas; is that correct?

22 A. That is correct.

23 Q. And Mr. Debevc, you are aware that David Kekich and Cliff  
24 Lloyd's interests in this program, in the 90% Loan program,  
25 those interests were bought out, weren't they?

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1 A. They were bought out, I believe, sometime after the date  
2 of this memo; sometime in 2000, yeah, 2000.

3 Q. And so in July, and going on through 2000, you received  
4 correspondence and there were communications about buying out  
5 David Kekich's and Cliff Lloyd's interests in the 90% Loan  
6 program; isn't that correct?

7 A. I might have received the, um, correspondence to that  
8 effect in this first -- sometime during the first half of  
9 2000, because at that time it was -- the organization of the  
10 company was openly discussed, and it was also discussed that  
11 I would become a member.

12 So this is, for your information, that I might have  
13 received some -- I don't know that I received all of the  
14 communications.

15 Q. Some of these communications, and you were otherwise  
16 aware, that David Kekich and Cliff Lloyd, their interests in  
17 DDA, were bought out, too, weren't they?

18 A. I'm not aware of that. I don't recall that that was the  
19 case.

20 As I said, I paid casual attention to that because  
21 that was something that was being done between Charles  
22 Cathcart and the other partners.

23 MR. CLUKEY: Your Honor, looking at the -- just the  
24 bottom four paragraphs. Your Honor, the second paragraph  
25 there, we believe that establishes the relevance of this

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1 document.

2 THE COURT: You mean, "starting since"?

3 MR. CLUKEY: Yeah. "I would be out of line" --

4 THE COURT: Well, I'll sustain the objection.

5 Q. Mr. Debevc, you, in fact, were told that David Kekich was  
6 a founder of DDA, weren't you?

7 A. I don't know if I was told "you," I might be, but I don't  
8 recall that specifically.

9 Q. Why don't you look down the page there, second paragraph,  
10 in that bottom portion of the e-mail, tell me if you  
11 remember --

12 A. Second --

13 Q. -- starting with, "Since I'm not".

14 A. Yes, but at the same time, I think that it also said, um,  
15 "I may be just irritating Yuri and Scott there". So we were  
16 not there at the meeting.

17 Q. But my question is: You were told that David Kekich and  
18 Cliff Lloyd were founders of DDA, weren't you?

19 A. I don't see that in that sentence.

20 Q. I'll -- owners, yeah. It says outside owners.

21 MR. COOPER: Your Honor, he's reading in the  
22 document. You sustained the objection.

23 THE COURT: Sustained. Strike that and go ahead to  
24 the next question.

25 Q. As you just mentioned, you understood that some meeting

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1 that is going to go on with David Kekich and Cliff Lloyd, for  
2 some reason, David Kekich thought it was going to be annoying  
3 to have you there?

4 A. Well, I think that there was -- as the organization of  
5 the company was happening, perhaps they thought that they --  
6 new people coming in sort of people, in wanting to be at the  
7 meeting, that that would be annoying. I mean, I think that  
8 was his view.

9 Q. All right. Mr. Debevc, I'll take that back.

10 You see another company on here, on this chart,  
11 called Transcent. You signed formation documents for that  
12 company, didn't you?

13 A. Yes, I did.

14 The formation documents were drawn up and given to  
15 me by 10 State Street, who was the attorney for Derivium  
16 Capital, and they formed this company; said that this would  
17 be ultimately for my benefit.

18 Q. Transcent is a company that was a company located in St.  
19 Vincent in the Grenadines?

20 A. I don't believe it was located in -- I can't recall the  
21 location -- that it was in St. Vincent in the Grenadines.

22 Q. You formed a company you don't even know where it was  
23 located?

24 A. I trusted the attorneys and my partner, senior partner,  
25 who is a Ph.D. in economics. And they said this would be --

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1 that forming this -- ultimately, that it's going to be of  
2 benefit down the road. I trusted the individuals and I  
3 signed it.

4 Q. Mr. Debevc, who was the protector of that company  
5 Transcent?

6 A. I don't recall who. It's Robert Nagy, wasn't it?

7 I would have to take a look at the document to take  
8 a -- as I said, I do not recall.

9 MR. CLUKEY: A copy of Exhibit 190, please. Pull it  
10 up. Put it to page 4, please.

11 Q. Turn to page 4. It's Exhibit Number -- that's 0222.

12 Mr. Debevc, that's your signature on the page?

13 A. Yes, it is.

14 MR. CLUKEY: Go back to the first page of this.

15 Q. And that's your name on the first page of this document,  
16 Yuri Debevc?

17 A. That is correct.

18 Q. Could you go to page 14, please, 0232?

19 A. Did you say 14?

20 Q. Yes. Thank you.

21 MR. CLUKEY: Your Honor, I move this document into  
22 evidence.

23 MR. COOPER: Your Honor, 402, 403. Mr. Nagy's name  
24 is not even on this document, his signature.

25 THE COURT: Overruled.

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1 (Thereupon, Government's Exhibit Number 190 was  
2 received in evidence.)

3 Q. Could you pull this document up on the first page,  
4 please, Mr. Debevc?

5 A. Yes, sir.

6 Q. "Ordinary Member Contract".

7 "Ordinary Member Contract is made this 17th day of  
8 June, 2000 between Transcent Ltd., the company, a company  
9 limited by guarantee and having a share capital, incorporated  
10 in Saint Vincent and the Grenadines."

11 Does that refresh your recollection that you had a  
12 company in Saint Vincent in the Grenadines?

13 A. That's what this document says.

14 Q. And the next line down there: "Yuri Debevc, guarantor."

15 MR. CLUKEY: If we could flip ahead to page 4,  
16 please.

17 Q. And you just told the jury that's your signature on the  
18 bottom there, isn't it?

19 A. Yes, I did.

20 Q. If we could flip ahead to 14 pages to, it's .0232.

21 "Appointment Of Protector". "Whereas the company  
22 wishes to appoint Robert J. Nagy (the protector) as the  
23 Protector of the Company with the rights and duties set out  
24 in the bylaws."

25 "Now therefore, be it resolved that Robert J. Nagy

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1 be appointed Protector of the Company until further notice.  
2 July 28, 2000."

3 Robert J. Nagy was the protector of your company,  
4 this offshore company of yours, wasn't he?

5 A. That's what the document says.

6 MR. CLUKEY: Is Exhibit 58 in?

7 MR. SEACORD: Yes.

8 MR. CLUKEY: Pull this up, please.

9 Q. Mr. Debevc, we talked about this earlier. You mentioned  
10 a document that you signed when you became an owner of  
11 Derivium Capital. That wasn't really dated on the date, the  
12 time that you signed it. It was a document that was  
13 backdated to make it look like it had been signed earlier,  
14 right?

15 A. That's correct. That's the writing.

16 Q. So here we've got a letter to Charles Cathcart, Yuri  
17 Debevc in reference to the operating agreement.

18 "Dear Charles, Yuri and Scott" -- and we see the  
19 date in the top, November 22nd. If we can zoom out. You see  
20 there is a number on the bottom of the page. Nagy 110, the  
21 very bottom there, it's a Bates number indicating this  
22 document came out of Robert Nagy's files. And then if we can  
23 zoom in on the text a little bit.

24 "Charles, Yuri and Scott. On the cover of this  
25 letter you will find a draft of the reference document for



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1 your review. You will note the agreement is in the name of  
2 First Security Capital" -- it relates back to the inception  
3 South Carolina company -- "you will note that this agreement  
4 is in the name of First Security Capital as it relates back  
5 to the inception of the South Carolina company."

6 So this is in 2000. The company is called Derivium  
7 Capital at this point in time, right, Mr. Debevc?

8 A. There was a name change, that is correct.

9 Q. So you are being given a document, an operating  
10 agreement, that is calling it First Security Capital, what it  
11 used to be called, correct?

12 A. That is correct.

13 Q. If we scroll out again. This is a document from Robert  
14 Nagy's files -- zooming in on that reference -- "operating  
15 agreement" -- about the middle.

16 That's Mr. Nagy's handwriting, isn't it?

17 A. I can't -- I'm not a writing expert. I don't know that  
18 that is or is not Mr. Nagy's handwriting.

19 Q. That's okay. We'll ask Mr. Nagy about that.

20 MR. CLUKEY: And if we go to the next document. This  
21 is a cover letter. If we can zoom in on this, include the  
22 date down there on the bottom. "Operating Agreement of First  
23 Security Capital".

24 Q. What's the date on that agreement, Mr. Debevc?

25 A. January 2, 1998.

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1 Q. And you testified earlier you did not sign this on  
2 January 2, 1998, did you?

3 A. That is correct, I testified to that fact.

4 Q. You signed this in -- sometime in 2000?

5 A. Um, in all likelihood around there.

6 Q. Mr. Debevc, Derivium got legal advice from a law firm  
7 called Shartsisfrieze in 2000 and 2001, didn't they?

8 A. They received legal advice from many law firms,  
9 Shartsisfrieze was one of them.

10 Q. Shartsisfrieze told Derivium that the 90% Loan program,  
11 they looked at it and they said it likely violates the  
12 securities laws. Didn't they tell you that?

13 A. It was a long memo, the relation -- I think the letter  
14 speaks for itself. I don't think I need to reread the  
15 letter.

16 Q. As part of that advice, they told you that they didn't  
17 think the loans were real. They said, these aren't bona fide  
18 loans in our view, didn't they?

19 A. No, um, I believe that the terminology was that if they  
20 were not -- they are qualifying it -- if they were not, then  
21 it could present a profit.

22 Q. They said those loans were probably not bona fide under  
23 the securities laws, didn't they?

24 A. I don't recall that specific language, but if you are  
25 telling me that that is in there -- it may be in there.

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1 Q. Can I get a copy of Exhibit 67, please?

2 Now, Mr. Debevc, as part of that, they also told you  
3 if the loans aren't bona fide, it's going to present a  
4 problem under the tax laws, didn't they? But not genuine,  
5 not real loans, that is going to be a problem for you in the  
6 tax laws, right?

7 A. If it was a case that they were not, and I think there  
8 was a reference made to that.

9 Q. And they told you you need to immediately go to a law  
10 firm and get a legal opinion from a real law firm, respected  
11 law firm, you need to do that immediately.

12 They told you that, right?

13 A. I believe that the phrase was you may want to go there.  
14 I don't believe that it would be directed to go immediately.  
15 The individual that wrote that memo was a securities  
16 attorney, not a tax attorney, and suggested -- and that that  
17 memo suggested to go seek a tax lawyer, did not say anything  
18 about it immediately. It says you may want to -- to take a  
19 look at that; get another tax opinion.

20 Q. She urged you to go get a tax opinion, didn't she?

21 A. I don't know about the specific language that was used.  
22 I think it would be, but it is in the document.

23 Q. Okay. So you got a lawyer who has looked at the 90% Loan  
24 program, and she's suggesting, shall we say, for you to go  
25 get a tax opinion about the legality of this program, isn't

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1 she?

2 A. That's what the letter says.

3 Q. Derivium Capital tried to do that, didn't they?

4 A. Derivium Capital, the tax matters were purview of their  
5 principal, Charles Cathcart and Scott Cathcart, which  
6 together would seek law opinions.

7 Q. Derivium Capital tried to get a tax opinion from a law  
8 firm called McDermott Will & Emery, correct?

9 A. My recollection of the conversation was that the  
10 McDermott law firm wrote an opinion that -- and they wanted a  
11 significant amount of money to write the same opinion for a  
12 product which was almost identical, if not identical, to the  
13 90% Stock Loan -- that they wanted a significant amount of  
14 money just to produce the same work for Derivium. And so it  
15 was not -- so the principals did not go.

16 Q. Make sure I understand your testimony, Mr. Debevc.

17 Derivium Capital was recommended by a law firm,  
18 Shartsisfrieze, to go get a tax opinion on this program.  
19 This is in 2001.

20 How this program really works under the tax laws,  
21 you did go talk to a law firm in 2001 and they wouldn't give  
22 you a legal opinion on this, saying this works under the tax  
23 laws, will they?

24 A. Well, um --

25 MR. COOPER: Objection, mischaracterizes --

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1                   THE COURT: Okay. I think you need to rephrase that  
2 question and lay a foundation for his knowledge of that  
3 question.

4           Q. Mr. Debevc, Derivium Capital spoke with McDermott Will &  
5 Emery in 2001, and they would not give Derivium Capital a  
6 legal opinion saying this program was okay; isn't that true?

7           A. It is my understanding that Charles Cathcart, who is the  
8 senior partner, contacted McDermott Will & Emery; that there  
9 was discussion about producing law opinion; however, that  
10 since they already produced a law opinion from a competitor  
11 who had the identical product, they wanted excessive fees to  
12 produce the same law opinion. That's what was relayed to me.

13           MR. CLUKEY: Exhibit 69, please. Can you pull that  
14 up, too? Just not on there.

15           Q. Take a look at this memo, Mr. Debevc. We've talked about  
16 this memo before, haven't we, Mr. Debevc? We've talked about  
17 this e-mail before?

18           A. Yes, I have.

19           MR. CLUKEY: Your Honor, we would move Exhibit 69  
20 into evidence.

21           MR. COOPER: We have a 402, 403. Mr. Nagy is not on  
22 the e-mail to tax advice.

23           MR. CLUKEY: This directly concerns the document  
24 that he got from McDermott Will --

25           THE COURT: Overruled.

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1 MR. CLUKEY: Would you bring this up, please,  
2 Exhibit 69? And then can you bring up the top half there?  
3 Mr. Debevc -- it says "May 25, 2001," Tim Scrantom, Scott  
4 Cathcart, Yuri Debevc: Opinions.

5 "FYI. We can try to be responsive to this short of  
6 providing financials, but the part about wanting to know  
7 whether or not the lender is subject to insurance or banking  
8 regulations and the general 'witch hunt' Karch is on over and  
9 above what the assignment calls for suggests to me that we  
10 will never satisfy them; and, even if we could, it would take  
11 months to get them to a successful conclusion.

12 "Unfortunately as much as we like Jerry Kaplan, I  
13 think we have to conclude that we are in the wrong pew with  
14 McDermott, Will & Emery on this and we need to find another  
15 firm to work with for tax opinions."

16 Mr. Debevc, you got this?

17 A. Yes, I did.

18 Q. Let's see what we are talking about here. Let's see what  
19 McDermott, Will & Emery is asking for.

20 MR. CLUKEY: If we can blow up the bottom half of the  
21 document.

22 Q. "Dear Charles: Upon reflection and consultation with  
23 opinion review partners in our firm, we believe we have a  
24 professional responsibility to perform due diligence  
25 sufficient to understand Derivium's and the lender's business

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1 as it relates to the opinion and to satisfy ourselves that  
2 Derivium and the lender will be able to meet their  
3 obligations to deliver shares to borrowers willing to repay  
4 their loans at the end of the term. We believe this would  
5 include at a minimum our review of the lender's and DC's  
6 financial statements, although we are willing to consider  
7 alternate means Derivium Capital's financial statements,  
8 although we are willing to consider alternate means of  
9 satisfying our due diligence obligation. We would like to  
10 know the ownership, affiliation and history of the lender and  
11 its principals, Derivium's relationship to the lender, where  
12 -- the next page -- "where the lender is subject to insurance  
13 or banking regulations and other businesses engaged in by the  
14 lender. We would keep all information confidential."

15 Mr. Debevc, in there anywhere does McDermott, Will &  
16 Emery tell you, do they tell you that they are not going to  
17 give you an opinion because they are going to charge you a  
18 higher rate? Is that anywhere in that document?

19 A. Not in this document, but that was what was initially  
20 relayed to me by Charles Cathcart.

21 Q. Okay. But then you got a communication that was also  
22 relayed by Mr. Cathcart; you got something that told you the  
23 people at McDermott, Will & Emery --

24 MR. COOPER: Your Honor, I need to discuss something  
25 with you outside of the jury with Mr. Clukey, please? May I?

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1 It has to do with what is going on.

2 THE COURT: Okay. Well, it's time for lunch anyway.  
3 So we'll break for lunch at this time. We'll start again at  
4 about 2:15.

5 Have a nice lunch. At least it's not pouring rain  
6 today, okay?

7 (Thereupon, the jury retired from the courtroom.)

8 THE COURT: Yes, sir?

9 MR. COOPER: This e-mail he's talking about, and  
10 what McDermott is talking about, about we have a professional  
11 standard -- you remember we stood up and said we were going  
12 to exclude circular 230 evidence -- that is exactly what he's  
13 talking about on the due diligence -- when we were talking  
14 about keeping the experts out to shorten the trial. And I  
15 think all that testimony should be stricken and disregarded  
16 on our stipulation.

17 THE COURT: Luckily enough, in my -- since I have  
18 been a judge for 20 years, a lawyer for 15 years and  
19 three years of law school before that, I have no conception  
20 of what circular 230 is.

21 That's one of the blessings of my life so far. I  
22 guess you are going to ruin the rest of my life by telling me  
23 what it is.

24 MR. COOPER: It's on the e-mails.

25 THE COURT: Because you call it "circular 230".



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1 MR. COOPER: I'm sorry, Your Honor.

2 Circular 230 were regulations that were promulgated  
3 by the Treasury, which is the professional standards for tax  
4 professionals, in sum.

5 And when we stood up and talked about not bringing  
6 the experts in on the malpractice issue, one of the specific  
7 things we talked about was not introducing evidence as a  
8 circular 230.

9 So when he's talking about doing tax opinions in our  
10 professional responsibilities, that is circular 230.

11 MR. CLUKEY: Your Honor, if I could be heard? I'm  
12 not arguing failure to comply with professional standards;  
13 all I'm saying, what I think this document is saying, is they  
14 want financials. They want some information to know that  
15 this is a real -- this is really going on, so they are not  
16 going to give an opinion unless they know what is really  
17 going on; that's all. They just want more information.

18 Mr. Debevc just testified that they were going to  
19 give an opinion because they were charging too much. And the  
20 truth is that they wanted more information, they suspected  
21 this thing was a scam, so they wanted more info.

22 MR. COOPER: Absolutely not. An opinion is a  
23 defined term under circular.

24 THE COURT: How in the world -- I mean, you know,  
25 like I said, three years of law school, 15 years of law

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1 practice, 20 years as a judge, and I don't know what it  
2 means.

3 How in the world is that going to be something the  
4 jury understands?

5 MR. COOPER: I don't want it to go any further  
6 because that is -- that is putting Nagy to that standard for  
7 giving a tax opinion, which is way up here. Due diligence,  
8 6700, you remember, has no duty of inquiry. That's the --  
9 that's what the *Estate Preservation* case says. So he's using  
10 this e-mail to say McDermott wouldn't do it because they had  
11 to hit the circular 230 standard by doing all this due  
12 diligence that's required.

13 What this is insinuating is my client should have  
14 done it, too, when 6700 has no duty to.

15 THE COURT: I'll overrule that objection, okay?

16 All right. So we'll start again at 2:15.

17 All right. How much longer do you think you are  
18 going to be going with Mr. Debevc?

19 MR. CLUKEY: We've got a little ways, Your Honor.

20 (Thereupon, there was a lunch recess.)

21 THE COURT: Are y'all ready to go? Okay.

22 (Thereupon, the jury returned to the courtroom.)

23 THE COURT: Okay. I hope y'all had a nice lunch.

24 Mr. Clukey?

25 MR. CLUKEY: Thank you, Your Honor.

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1 BY MR. CLUKEY:

2 Q. Can you pull up Exhibit 69? And if you go down to the  
3 bottom again.

4 Mr. Debevc, when we left, broke for lunch, we were  
5 talking about this e-mail that was sent, forwarded on to you  
6 from McDermott, Will & Emery, and they are talking about some  
7 of the information they wanted from Derivium Capital before  
8 they would give you tax advice; is that correct?

9 A. In part, some of this information they are looking at is  
10 part of that magical formula that Charles sent in for  
11 hedging. I think it's not unusual for a company not to give  
12 financials.

13 As a matter of fact, I worked for the largest  
14 company, Cargil, \$69 billion, and they would not provide  
15 financials to anyone.

16 Q. But here it looks like they are trying to figure out  
17 whether these lenders are even real. Wouldn't you agree with  
18 that?

19 A. I think that's part of their discord, yeah.

20 Q. So if you go up to the top -- and it's at the top of the  
21 e-mail, we can just put this in context now. Charles  
22 Cathcart sending it to you and Scott and Tim Scrantom, the  
23 lawyer who worked for all these companies, right, the saying,  
24 "We can try to be responsive in short of providing  
25 financials," but the part of "wanting to know whether or not

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1 the lender is subject to insurance or banking regulations and  
2 the general 'witch hunt' over and above what the assignment  
3 calls for, suggests to me we will never satisfy them. And  
4 even if we could, it would take months to get them to a  
5 successful conclusion. Fortunately, as much as we like Jerry  
6 Kaplan, I think we would like to conclude that we are in the  
7 wrong pew with McDermott, Will & Emery and we need to find  
8 another firm to work with tax advice."

9 They didn't give you tax advice, did they?

10 A. No, they did not.

11 Q. And you never got a tax opinion -- Derivium and you  
12 personally never got a tax opinion saying the 90% program is  
13 okay?

14 A. I did not get that from McDermott.

15 Q. You never got a -- Derivium itself never got a written  
16 tax opinion saying this program is okay under the tax law?

17 A. An opinion? I think there were various memoranda that  
18 were produced that suggests I think was.

19 Q. Very clear on my question.

20 Derivium Capital, and you personally, never got a  
21 tax opinion, a written opinion, that said this was okay from  
22 the tax office that was written to Derivium?

23 A. I personally never got it.

24 Q. And Derivium Capital?

25 A. To the best of my knowledge, no.

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1 Q. The only person -- the only person who ever gave Derivium  
2 Capital a memo, a tax memo saying this thing was okay under  
3 the tax laws, was Robert Nagy; isn't that right?

4 A. I have seen memos to that effect. I don't know if there  
5 were others that I have not seen.

6 Q. You have never seen any?

7 A. I have not.

8 Q. Mr. Debevc, February of 2004, the California Franchise  
9 Tax Board, the largest state taxing authority in the country,  
10 they told Derivium that they thought this 90% Loan program  
11 violated the tax laws, didn't they?

12 A. There were two causes of action. And again, I was not  
13 the lead person on the tax opinion, that was -- or tax  
14 matters for Derivium -- I was only in operations, but to the  
15 best of my understanding was that there would be two  
16 causes -- two views, I mean, from California --

17 Q. Again, Mr. Debevc, let me stop you because I think you  
18 might be talking about two different things.

19 A. Perhaps I'm confused.

20 Q. Does the California Franchise Tax Board -- and then there  
21 is the California Department of Corporations action?

22 A. Perhaps I'm confusing the two.

23 Q. Are you thinking about the California Department of  
24 Corporations action that was earlier?

25 A. Um, I think so.

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1 Q. Okay. So let me show -- let me ask you this question:  
2 When the California Franchise Tax Board was, the entity in  
3 California, when they challenged this transaction in 2004,  
4 did Robert Nagy tell you, you better stop promoting this  
5 program?

6 A. No, I don't believe that he did.

7 Q. In fact, Mr. Nagy thought this was another way to make  
8 some more money, didn't he?

9 A. I don't recall that he made reference to.

10 MR. CLUKEY: Let's pull up Exhibit 207, it's in  
11 evidence.

12 Q. Look at the top of the page here. From Tim Scrantom to  
13 Charles Cathcart. We see Yuri Debevc right there.

14 You are getting this -- the date on this is  
15 February 26, 2004, regarding the FTB Franchise Tax Board  
16 opinion position.

17 And then we see that Tim Scrantom, your lawyer, is  
18 writing to you and telling you, "Speaking very frankly among  
19 us, I think Bob sees this as an opportunity to generate more  
20 business from target borrowers."

21 See that, Mr. Debevc?

22 A. I see that.

23 Q. Do you recall Tim Scrantom telling you that?

24 A. I -- there was so many e-mails -- certainly -- obviously  
25 he sent this e-mail.

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1 Q. Now, Mr. Debevc, in December of 2004, the IRS told  
2 Derivium Capital that it violated the tax laws, didn't it?

3 A. Um which -- because again, there is so many -- there are  
4 many things going on at the same time, would you please  
5 enlighten me a little bit?

6 Q. Sure.

7 So February 2004, the California Franchise Tax Board  
8 tells you it violates tax laws. Later that year, the IRS  
9 comes to you and tells you this thing violates the tax laws?

10 A. I don't recall the specific document that -- perhaps you  
11 tell me that's what happened.

12 Q. The IRS comes to Derivium, it's a billion dollar program,  
13 right?

14 A. Correct.

15 Q. They tell you this thing violates the tax laws and you  
16 don't remember that happening?

17 A. I don't remember saying IRS comes to tell you that.

18 Q. So you don't remember that?

19 A. The first time the IRS told me that I was violating  
20 something was in 2006 when they sent me a letter.

21 Q. Okay. Mr. Debevc, what's an In The Money report?

22 A. It was just a -- simply a descriptor, for lack of a  
23 better word, which loans were the -- a database that was  
24 normally descriptive for a database report that would list  
25 the loans which were -- in which the collateral was worth

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1 less than the payoff amount.

2 Q. It was a report that showed the company's exposure; isn't  
3 it?

4 A. It was a snapshot -- um, as I said, it was a snapshot of  
5 that particular moment; not the end of the loan term.

6 Q. So at that moment in time, it was a snapshot of the risk  
7 that the company faced, if employees?

8 A. If the world stopped right now.

9 Q. If the world stopped right now, this is how much exposure  
10 the company has as far as customers' loans going up, and you  
11 are going to have to pay this back; is that correct?

12 A. For the loans that were, um, underwater and the customers  
13 would walk away.

14 THE CLERK: What's the number?

15 MR. CLUKEY: There is no objection, Your Honor. We  
16 would ask to move in Exhibit 16.

17 THE COURT: Okay. Without objection.

18 (Thereupon, Government's Exhibit Number 16 was  
19 received in evidence.)

20 Q. In The Money loans, this is just names of customers  
21 here -- and I think Patrick Kelly talked about this  
22 earlier -- Patrick Kelly worked for you, is that right, Mr.  
23 Debevc?

24 A. Yes, he did.

25 Q. And so that those parenthesis at the final column there,



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1 that's a negative number; that represents the exposure of the  
2 company; is that correct?

3 A. That would represent the exposure of the company, 30th of  
4 September of 2000.

5 Q. Okay. Go to the last page, please.

6 And it says September 30th of 2000. Mr. Debevc, can  
7 you tell the jury what the exposure is of the company at that  
8 snapshot in time?

9 A. That snapshot in time, the exposure is \$219,319,120.

10 I think also that, if you take a look, you have  
11 loans in here that would only mature in 2003.

12 And so to say "a snapshot," as we all know, the  
13 stock market goes up and down. To say "a snapshot" today  
14 is -- what will be reflective of three years from now will be  
15 erroneous.

16 Q. Exposures. Those were loans that the company might have  
17 to pay the company back?

18 A. It's a snapshot at this particular -- at this point in  
19 time, since these loans were not callable and were not  
20 repayable.

21 For example, a loan of August 30, 2003 would only be  
22 essentially a risk, if you will call it, financial risk at  
23 that point in time.

24 Q. Mr. Debevc, we were looking at one of the memos, that FRN  
25 proposal for Mr. Nagy, where he's asking if you want to start

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1 a new company at that point in time.

2 Derivium Capital hadn't declared bankruptcy yet,  
3 correct? It was in July of 2005. Derivium declared  
4 bankruptcy in September of '05?

5 A. I believe that that would be correct.

6 Q. At that point in time, the company had actually  
7 defaulted, I think you said -- was it 11 -- on 11  
8 transactions about that time?

9 A. I think I said something between 11 and 14. Something to  
10 that effect.

11 Q. Okay. So this is the exposure when the company did, in  
12 fact, default on commerce transactions, correct?

13 A. They did default on some of the customers' transactions,  
14 out of 1400, ours -- 13 -- more than 1300 transactions  
15 performed very well.

16 Q. Let's make sure I understand.

17 So at the end, though, there are about 126 defaults,  
18 correct?

19 A. Correct. That -- I think that number is accurate.

20 Q. Okay. And so this is a document that's generated -- more  
21 than one person within Derivium seeing this. Patrick Kelly  
22 talked about it. You knew about this.

23 So this information, this exposure of information is  
24 something that Derivium Capital knew, right?

25 A. This is a snapshot that Derivium Capital knew, and also

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1 the lender would know, because this was provided as part of  
2 the reporting requirement. Initially Derivium, and then  
3 Veridia.

4 Q. Mr. Debevc, I think you've testified previously to your  
5 knowledge there was no hedge in the 90% Loan program that  
6 consisted of European puts and calls; is that right?

7 A. I testified that I -- if there were, I did not see. To  
8 my knowledge, I did not see one on this side of the border,  
9 if you want to call, in the United States.

10 Q. You never saw evidence of European puts and calls from  
11 what you could see; is that correct?

12 A. The only time I saw evidence of puts and calls was when  
13 certain transactions that Bancroft issued option coverage for  
14 transactions through Optech.

15 Q. And I think your signature is on those documents, right?

16 A. That is correct.

17 Q. As far as money actually being spent, you didn't see any  
18 money being spent on European puts and calls, correct?

19 A. No, I did not.

20 Q. And Dr. Cathcart, I think you testified previously, you  
21 didn't -- you don't recall him ever telling you that the  
22 company was spending money on European puts and calls, do  
23 you?

24 A. No, I do not recall that.

25 Q. Mr. Debevc, I think the way I understand it, the way

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1 you've explained it in the past, you've said that the hedge  
2 is really two things: The hedge was the sale of the customer  
3 stock, and then it was the investment in these companies  
4 here, right?

5 A. That was what was reasonable to me.

6 Q. And by "these companies here," I mean the startup  
7 companies?

8 A. That is correct.

9 Q. Companies that you owned?

10 A. I owned two Shenandoah, um -- participation in those  
11 companies.

12 Q. You owned them; you just didn't own them directly.

13 You owned them through a holding company, a shell  
14 company?

15 A. That's the way that the attorneys for Charles Cathcart  
16 had set it up.

17 Q. Now, these companies here, some of these companies, you  
18 were on the board of directors of some of these?

19 A. Yes, I was.

20 Q. Robert Nagy was on the advisory board of some of those  
21 companies, too, wasn't he?

22 A. That is my recollection.

23 Q. And all of those companies were funded -- we talked about  
24 this earlier, right -- all those companies were funded from  
25 \$43 million of sales of customers' stocks?

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1       A. They were funded through Bancroft profits and Derivium,  
2       through Derivium.

3       Q. Make sure we are clear here.

4               You were funded through the sale of customer stocks,  
5       right? That's where the money came from?

6       A. That -- the ten percent profit remained for the state of  
7       costs, and it came out of that pool of money, it did not come  
8       from -- as the 90 percent of the value of their stock was  
9       returned to the borrower, of those remaining ten percent,  
10      there were expenses, brokerage fees, and so on, it was out of  
11      that pool of money where that was the source of that money  
12      for this.

13      Q. Ten percent remaining from the sale of the customer  
14      stock, correct?

15      A. That would be correct.

16      Q. And that money was used to fund these companies that you  
17      owned?

18      A. Well, it was already less than ten percent. Because  
19      after fees, the brokerage houses to Bancroft, to Derivium, to  
20      other people, it was -- it was from that general one, call it  
21      pool of money.

22      Q. So some of the money?

23      A. Correct.

24      Q. Some of the money went to it, correct?

25      A. Correct. Some of the money.

DEBEVC - DIRECT

1 Q. Now, Mr. Debevc, in cases where the startup companies  
2 were funded, sometimes the money went straight from Derivium  
3 Capital here in the early years. That's what happened,  
4 right?

5 A. In the earlier -- correct. That the direction was that  
6 if there were calls or requests for funding, um, those  
7 requests would be approved by Charles Cathcart, the funds  
8 would be transferred. However, the book entries I was told  
9 would show essentially the -- the flow of money as going  
10 through from Derivium to Spencer, from Spencer to Shenandoah.

11 Q. I want to break it up.

12 In the earlier years and the later years, the  
13 earlier years the money just went straight there, right?

14 A. The money went directly, but it was to be booked. That  
15 was my understanding.

16 Q. The money went straight there early on. And then later  
17 on, your accountants came back and made adjusting entries,  
18 didn't they? To make it look like it had gone through  
19 Spencer; is that right?

20 A. I believe that to be the case, but again, I'm not an  
21 accountant.

22 Q. You believe that to be the case? After the fact, the  
23 accountants came back and made adjusting entries to make it  
24 look like the money was actually going a different way; is  
25 that correct?

DEBEVC - DIRECT

1 A. That's correct.

2 Q. Mr. Debevc, every one of these startup companies failed  
3 during the 90% Loan Program except for one; isn't that right?

4 A. That is correct. And that they were all managed by the  
5 same person.

6 Q. Who were they managed by?

7 A. Jerry Pryor.

8 Q. Jerry Pryor managed all these companies?

9 A. At one time or another.

10 Q. He wasn't managing them all at the same time, was he?

11 A. Um, no. In succession.

12 Q. Okay. You were on the board of directors of the  
13 companies, weren't you?

14 A. I was one of their, um, many board members.

15 Q. Charles Cathcart, your partner, was on the board, wasn't  
16 he?

17 A. Yes, he was.

18 Q. He was the president of a bunch of these companies,  
19 wasn't he?

20 A. I don't know that he was the president, but I think he  
21 was on the board.

22 Q. So they all failed except for one?

23 A. And eventually, he also removed Jerry Pryor.

24 Q. Now, after they failed -- they all failed basically by  
25 2002, right?

DEBEVC - DIRECT

1       A. I think that Scienda, um, lingered on for another year,  
2       or a year and a half, and Charleston Aluminum actually is a  
3       success.

4       Q. Scienda was actually in bankruptcy, though, right?

5       A. Yes, it was in bankruptcy. It came out of bankruptcy and  
6       then it went back into bankruptcy. It couldn't resuscitate.

7       Q. And so this was supposed to be, as you claim, one of the  
8       hedges for the program, but after these companies all failed,  
9       Derivium kept doing the 90% Loan transaction, didn't they?

10      A. Well, Derivium actually was bankrupt and continued to do  
11      these transactions.

12      Q. Derivium and Veridia USA, they were doing the  
13      transactions, right?

14      A. They were outsource service providers to Bancroft.

15      Q. So your company that you 100 percent owned, it was still  
16      involved in the 90% Loan Program; is that correct?

17      A. Which company is that?

18      Q. Veridia.

19      A. When you say "involved," provided a reporting service to  
20      Bancroft and Optech, there was a -- an agreement to that  
21      effect.

22      Q. There was involved --

23      A. If that is what you call by "being involved," by  
24      providing a service through a service contact, then it was  
25      involved.



DEBEVC - DIRECT

1 Q. I just want to talk, for a minute, about Veridia and  
2 Derivium USA. When this happened -- when this happened from  
3 Derivium Capital to Veridia USA, Veridia's employees were the  
4 same people who had been at Derivium Capital, weren't they?

5 A. Yes. They were dismissed at Derivium Capital and they  
6 were rehired.

7 Q. Veridia used the same office equipment that used to be  
8 used by Derivium?

9 A. Um, the office equipment, yes, it did, but that office  
10 equipment belonged to Bancroft.

11 Q. Veridia serviced the same customers related to the same  
12 loans as Derivium; is that right?

13 A. Veridia was a service company to service loans on the  
14 contract.

15 Q. And Derivium Capital USA continued to market the 90% Loan  
16 Program for the same website that was used previously by  
17 Derivium; isn't that right?

18 A. I don't have any ownership of Derivium Capital USA. That  
19 was an entity that was sold solely by Charles Cathcart.

20 Q. And Derivium USA maintained an employee in the office  
21 previously occupied by Derivium at 1 Poston Road; isn't that  
22 right?

23 A. It was a separate office and a separate entrance and an  
24 individual there.

25 Q. 1 Poston is where Derivium used to be, right?

DEBEVC - DIRECT

1 A. That is correct.

2 Q. And Derivium USA, at 1 Poston?

3 A. I beg your pardon?

4 Q. There was somebody still there after Derivium?

5 A. It was Derivium USA going in one of the offices with a  
6 separate entrance.

7 Q. Mr. Debevc, I just have a few more documents to show.  
8 Not that many more to go.

9 MR. CLUKEY: Exhibit 199, please.

10 Q. Mr. Debevc, so this company appeared, Derivium U.K., it  
11 says Gibraltar, you were a director of that company, weren't  
12 you?

13 A. Um, Derivium U.K. was formed. I was involved in that. I  
14 didn't know where they come from.

15 Q. Take away that document, Mr. Debevc.

16 MR. CLUKEY: Don't pull it up, it's not in evidence.

17 Can you scroll ahead to the next page? Go again,  
18 next page. There we go.

19 Q. Is that your signature in about the middle of the page,  
20 it's about the third page in?

21 A. Yes, it is.

22 MR. CLUKEY: Your Honor, do you see the Bates number  
23 on the document? We would ask to move this document into  
24 evidence.

25 MR. COOPER: 402, 403, relevance.

DEBEVC - DIRECT

1 THE COURT: Overruled.

2 Go ahead. 199 in evidence.

3 (Thereupon, Government's Exhibit Number 199 was  
4 received in evidence.)

5 Q. Mr. Debevc -- and actually, you can just do the top half.

6 This is a board meeting of Derivium Capital U.K.  
7 Ltd. Company Inc. in England, Wales, 143 Main Street,  
8 Gibraltar, June 2001.

9 What's this company doing, Mr. Debevc?

10 A. Derivium Capital U.K. was formed to explore the ability  
11 of doing the 90% Stock Loan business in England.

12 And I think you will also see that there was a  
13 meeting, and I was not present at this meeting, and  
14 unanimously decided to appoint Scott Cathcart, Charles  
15 Cathcart and myself and Jonathan as directors of the company  
16 without anyone being present.

17 Q. So you were appointed as a director of this company by  
18 these folks in Gibraltar, the U.K. Gibraltar, and you are  
19 being appointed as a director of this company and you knew  
20 about this company, right?

21 A. Obviously, I signed the document, the information that he  
22 pay attention with references to the Gibraltar, I just -- I  
23 signed the document that was given to me to sign.

24 Q. Okay. Who is Jonathan Sandifer?

25 A. John Sandifer was also an employee of Derivium, initially

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1 First Security Capital, and then an employee of Derivium  
2 Capital United States.

3 Q. Jonathan Sandifer was an employee of First Security  
4 Capital originally?

5 A. Yes.

6 Q. And then Derivium?

7 A. Yeah. There was only a name change from First Security  
8 Capital to Derivium in 2000.

9 Q. And now in 2001, he's a director of this Gibraltar  
10 company; is that right?

11 A. He was sent to the United Kingdom to explore the  
12 possibility of expanding the 90% Stock Loan in the United  
13 Kingdom.

14 MR. CLUKEY: If we go ahead just a couple of pages,  
15 top half with Mr. Debevc's signature.

16 Q. I'll ask you, Mr. Debevc, is that your signature on the  
17 page?

18 A. Yes, it is.

19 Q. And if you zoom all the way up, we see that Bates number  
20 there, Nagy.

21 So Mr. Nagy knew about this company, this Gibraltar  
22 company, that you were director of; is that right?

23 A. Um, that's what the Bates stamp would suggest.

24 Q. Mr. Debevc, you also participated in the formation of  
25 this company right here, WITCO, correct?

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1 A. I don't recall. I know -- in all likelihood I signed  
2 certain documents.

3 Q. In all likelihood you signed certain documents in  
4 connection with this company WITCO?

5 A. I don't recall which documents I might have signed, but  
6 I'm sure that you have them on hand to refresh my memory.

7 Q. I think that's actually all I need, Mr. Debevc. We don't  
8 need to waste the jury's time with that.

9 MR. CLUKEY: Can we pull up Exhibit 264, please?

10 There is no objection to this exhibit, Your Honor,  
11 we move it into evidence.

12 THE COURT: Okay. In evidence.

13 (Thereupon, Exhibit Number 264 was received in  
14 evidence.)

15 Q. Okay. From Robert Nagy, Tim Scrantom. That's the lawyer  
16 who was working for all these companies, right?

17 And Robert Nagy is writing the lawyer saying: "Tim,  
18 I received another call from Bob Brandenburg this morning.  
19 He is very concerned about the timing for implementing the  
20 new structure. He's aware of USA Newco and Yuri's company,  
21 but he is not sure who will be in each, when all of this is  
22 to take place, and where is Scott will land."

23 What's going on here? This is November of 2002.  
24 What's happening right here? What's he talking about?

25 A. Derivium Capital LLC was -- essentially stopped doing

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1 business, and the business was being separated into a  
2 marketing company and a service company, and Scott was at the  
3 heart. He was head of marketing in San Francisco, so I think  
4 that this maybe makes reference as to where Scott worked.

5 Q. I see.

6 A. You have the question that the memo is documented.

7 Q. It's a question of Mr. Nagy that's happening here. Is  
8 that what you are suggesting?

9 A. The document speaks for itself.

10 Q. Mr. Debevc, we didn't really touch on this. Derivium  
11 Capital had two offices, right? It had an office here in  
12 Charleston; that was where your office was, right?

13 A. That is correct.

14 Q. Robert Nagy was down the street from you, right?

15 A. He was in -- um, 1 Poston Road is in West Ashley, it's in  
16 Charleston, and Robert Nagy is downtown.

17 Q. Okay. And for much of the time when this was going on  
18 there was actually an office here in Charleston; there was  
19 also an office in California, right?

20 A. The office in California was actually the office that  
21 preceded the office in Charleston.

22 Q. I'm sorry. Can you say that again?

23 A. The office in California was opened before the office in  
24 South Carolina was opened.

25 Q. Okay.

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1       A. And that was the marketing office where all -- initially,  
2       the marketing and loan servicing program was all done out of  
3       San Francisco.

4       Q. Okay. So Derivium Capital had two -- you are on both  
5       coasts. You are here in Charleston and you are in  
6       California, too?

7       A. That is correct.

8       Q. So the marketing is happening there and the  
9       administration and operations that's here in Charleston; is  
10      that correct?

11      A. That is correct.

12      Q. I want to make sure I understand the timing of it.

13                 First Security Capital was First Security Capital of  
14      Texas first, right?

15      A. That is -- that's my understanding.

16                 And again, that is before I came to the firm.  
17      That's my understanding.

18      Q. And First Security Capital actually comes here with  
19      Charles Cathcart here in Charleston first, doesn't it?  
20      Before it expands out to California?

21      A. I think that they were already in California, but then  
22      also currently opened an office, or shortly thereafter, an  
23      office here in Charleston. And again, this was before my  
24      time.

25      Q. So you don't actually have personal knowledge?

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1 A. I do not have personal knowledge.

2 MR. CLUKEY: Okay. Will you pull up Exhibit 2.

3 Q. If you look at 2 first, please, Mr. Debevc.

4 Do you know what this document is, Mr. Debevc?

5 A. Give me a second, please.

6 Q. Sure.

7 A. It's minutes of a meeting of C3 Industry. It's a copy of  
8 minutes of C3 Industries. It shows the predecessor to  
9 Scienda.

10 Now we would ask to move this into evidence.

11 MR. COOPER: It would be a 402, 403.

12 THE COURT: Overruled.

13 (Thereupon, Government's Exhibit Number 2 was  
14 received in evidence.)

15 Q. C3 Industries. Meeting in January of '99. All members  
16 are present. Additional members were accepted as follows:  
17 Jerry Pryor, 20 percent. Diversified Design Associates --  
18 DDA is a member -- DDA is a member of C3 Scienda, is that  
19 right, Mr. Debevc?

20 A. That's what this document suggests.

21 Q. Members accepted the appointment of Yuri Debevc as the  
22 director.

23 So you become a director at this point in time to  
24 C3; is that right?

25 A. That is correct.



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1 Q. And then who else is appointed as an advisory board  
2 member?

3 A. Two individuals, Howard Rudd and Robert Nagy.

4 Q. Could you go to the next page? Thermalseal of South  
5 Carolina, that's another startup company?

6 A. Thermalseal is the predecessor to Spray Foam.

7 Q. Here is Spray Foam on the chart. Thermalseal?

8 A. And they're -- Spray Foam and Thermalfoam were also.

9 Q. Okay.

10 MR. CLUKEY: And Sam, can you go to the next -- is  
11 there another page of this? This is the next page. So let's  
12 take a look at this here.

13 H2, another one of the startups on here.

14 A. That's a different document. One moment, please.

15 Q. And this is in October of '99, members that were  
16 accepted, Diversified Design Associates, DDA and Jerry Pryor;  
17 is that right?

18 A. That is correct.

19 Q. And then there is Yuri Debevc.

20 So you are appointed to the board of directors?

21 A. That is correct.

22 Q. And then can you tell us who the advisory board members  
23 are?

24 A. Robert J. Nagy and Howard Rudd.

25 Q. We see a couple of other names. Go up to the board of

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1 directors. A couple of people we have been talking about  
2 today, Jonathan Sandifer --

3 A. That is correct.

4 Q. -- your codirector of DC U.K., right?

5 A. That was, um, still First Security Capital.

6 Q. So this is still First Security Capital. He's an  
7 employee of First Security Capital and he's also on the  
8 advisory -- he's also a board member of H2; is that correct?

9 A. That's correct.

10 Q. And we see Cliff Lloyd, the lawyer we have been talking  
11 about, Robert Brandenburg.

12 Who is Robert Brandenburg?

13 A. I think -- I thought I mentioned to you Robert  
14 Brandenburg was also -- is also a CPA, and he was the  
15 internal accountant for Security Capital, Derivium Capital.

16 Q. Did Bob Brandenburg have an office with you in Derivium  
17 Capital?

18 A. No.

19 Q. Where was his office?

20 A. Normally -- he would work normally from home. He would  
21 telecommute or visit the office, but he lives in Summerville,  
22 South Carolina.

23 Q. He worked out of his home?

24 A. I believe so.

25 MR. CLUKEY: Go to the next 36.

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1 Your Honor, we would ask to move in Exhibit 36.

2 MR. COOPER: Same 402, 403.

3 THE COURT: Same ruling. In evidence.

4 (Thereupon, Government's Exhibit Number 36 was  
5 received in evidence.)

6 Q. I just want to talk about this first page here, Mr.  
7 Debevc.

8 Charleston Construction Company. So that's CCC?

9 A. One moment, please. Let me read it.

10 Q. Sure.

11 A. Thank you. Yeah.

12 Q. That's this company here, CCC, right? Charleston  
13 Construction Company, another one of the startup companies?

14 A. That is correct.

15 Q. So this is in September of 2000.

16 And we see Robert Nagy is on the advisory board at  
17 that time, isn't he?

18 A. Um, that's what the document shows.

19 Q. And you are on the board of directors at that time?

20 A. That is correct.

21 MR. CLUKEY: Your Honor, I have something very, very  
22 quick. Would it be okay if we took a two-minute break? I  
23 just want to look at the document and I don't want to waste  
24 the Court's time. Are you ready for a break now?

25 THE COURT: Y'all can stand up and stretch, or

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1       whatever you want to do.

2               THE COURT: Did you find what you needed?

3               MR. CLUKEY: Yes, Your Honor.

4               THE COURT: You can tell them to come back on in.

5               (Thereupon, the jury returned to the courtroom.)

6               THE COURT: Okay. Mr. Clukey?

7               MR. CLUKEY: Yes, Your Honor.

8               Q. Mr. Debevc, just one last thing, there was a judgment  
9       that was rendered against Derivium Capital by a customer by  
10      the name of Hammond. Do you recall that?

11              A. Yes, I do.

12              Q. In 2003?

13              A. If it shows that to be the case, then yes, 2003.

14              Q. Do you remember the day when the judgement was rendered  
15      against Derivium Capital by this customer?

16              A. I do not recall the specific date.

17              Q. If I showed you a document, would it refresh your  
18      recollection?

19              A. Yes, it would. The date file shows September 12th -- no,  
20      I'm sorry.

21              Q. Why don't you look at the last page and then I'll come  
22      and take it from you. See if it refreshes your recollection.

23              A. Yes, it does.

24              Q. Mr. Debevc, when was that judgment rendered against  
25      Derivium?

DEBEVC - DIRECT

1 A. Um, in 2003.

2 Q. And it was for \$25 million, wasn't it?

3 A. Yes, it was.

4 MR. CLUKEY: Mr. Debevc, I have nothing further at  
5 this time. Thank you.

6 CROSS-EXAMINATION

7 BY MR. COOPER:

8 Q. Good afternoon, Mr. Debevc.

9 A. Good afternoon.

10 Q. Do you remember when Mr. Clukey was talking to you about  
11 the IRS challenging the stock loan in December of 2004?

12 A. Yes, he did. I do.

13 Q. And did Derivium Capital hire a law firm to defend its  
14 position against the IRS?

15 A. Yes, it did.

16 Q. Like when the IRS takes a position, that doesn't  
17 necessarily mean it's right, does it?

18 A. No. That's why attorneys have a job.

19 Q. Thank God.

20 And did y'all hire the law firm of Sherman &  
21 Sterling?

22 A. Yes, we did.

23 Q. And did Derivium Capital enter into a retainer agreement  
24 with Sherman & Sterling?

25 A. Yes, it did.

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1 MR. CLUKEY: Objection, Your Honor.

2 THE COURT: Basis?

3 MR. CLUKEY: Relevance.

4 THE COURT: Go ahead.

5 MR. COOPER: Just laying the foundation.

6 Q. And do you recall if you signed that retainer agreement?

7 A. Yes, I did.

8 Q. And do you recall how much you had to pay the law firm as  
9 a retainer?

10 A. \$100,000.

11 Q. And did actually Derivium LLC retain Sherman & Sterling?

12 A. Yes, it did.

13 Q. And in fact, did Sherman & Sterling defend Derivium's  
14 interests against the IRS?

15 A. Yes, it did.

16 Q. And you were an owner of Derivium Capital, correct?

17 A. Yes, a minority owner.

18 Q. And as an owner, you agreed to the hiring of the law firm  
19 to protect your business, right?

20 A. I agreed with the decision of Charles Cathcart, the  
21 principal.

22 Q. I'm going to show you what's been marked as Plaintiff's  
23 Exhibit 63.

24 Mr. Debevc, is this an April 4th, 2005 letter that  
25 Sterling & Sherman wrote to the IRS?

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1 MS. WEIS: Can we get a clarification as to whether  
2 it's a government exhibit or --

3 MR. COOPER: It's a Nagy exhibit.

4 THE COURT: Nagy 63?

5 MR. COOPER: Yes, Your Honor.

6 THE COURT: Thank you.

7 THE WITNESS: Would you repeat the question, please.

8 Q. Yes.

9 Is this an April 4, 2005 letter that Sterling &  
10 Sherman sent to the IRS on behalf of Derivium Capital?

11 A. Yes, it is.

12 Q. And is this what you paid Sherman & Sterling to do for  
13 you?

14 A. This was part of the -- this is a product as a result of  
15 that retainer.

16 Q. And as an owner of Derivium, did you receive a copy of  
17 Sherman & Sterling's letter?

18 A. Yes, I did, through Charles Cathcart.

19 Q. And if you turn to the last page. Who signed this  
20 letter?

21 A. An individual called B. John Williams.

22 Q. And Mr. Williams, was he a lawyer at Sherman & Sterling?

23 A. I believe he was a partner.

24 Q. When you received this letter, did you file it into  
25 Derivium's books and records?

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1 A. Yes. This was part of the business records.

2 Q. Did you maintain this letter in the ordinary course of  
3 business at Derivium?

4 A. It was in the files. Once filed, it stayed there, yes.

5 MR. COOPER: Your Honor, I would like to move  
6 Exhibit 43 in.

7 MR. CLUKEY: Objection, Your Honor.

8 THE COURT: Basis?

9 MR. CLUKEY: Hearsay, relevance, foundation.

10 THE COURT: Let me see it. If y'all could give  
11 me -- lift them up and then I won't bother you anymore.

12 MR. CLUKEY: Your Honor, we would have some argument  
13 on this, too.

14 THE COURT: Do you have any other questions with  
15 regard to that exhibit in regard to introducing it into  
16 evidence?

17 MR. COOPER: No. I believe I laid the foundation.

18 THE COURT: When the jury takes the afternoon break,  
19 we can talk about the argument on that, and you can move on  
20 to something else?

21 MR. COOPER: I can.

22 THE COURT: That's why -- I just asked you, are you  
23 going to try to get Mr. Debevc to say anything about this  
24 document?

25 MR. COOPER: Yes.



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1 THE COURT: Okay. Let's -- we'll argue about it in  
2 the afternoon break, and then you can go back and ask to  
3 admit it into evidence. How does that sound?

4 MR. COOPER: Hopefully, it sounds good.

5 THE COURT: Okay. I'll get to read it.

6 Q. Also Mr. Debevc, do you recall when Mr. Clukey was asking  
7 you about your tax losses on the tax returns?

8 A. Yes, I do.

9 Q. And two -- and those tax losses were related to  
10 Shenandoah?

11 A. That is correct.

12 Q. But let me -- and did you sign a personal guarantee to  
13 Shenandoah?

14 A. Yes, I did.

15 Q. And is being an owner of Shenandoah, did Scott Cathcart  
16 also sign a personal guarantee?

17 A. Yes, he did --

18 Q. And --

19 A. -- as well as Charles Cathcart.

20 Q. Right.

21 And because you were -- you were a 25 percent owner,  
22 Scott Cathcart was a 50 percent owner and Scott -- Charles  
23 Cathcart was a 50 percent owner and Scott Cathcart was a  
24 25 percent owner, correct?

25 A. That is correct.

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1 Q. And profits and losses, in accordance with the  
2 partnership agreement, were allocated in proportion to your  
3 ownership?

4 A. That is correct.

5 Q. And Mr. Clukey said you took all these losses, but you  
6 didn't have the money. Do you remember that?

7 A. That is correct.

8 Q. I'm going to show the second page of Exhibit 38 that's  
9 already in evidence.

10 As being an owner of Shenandoah, did you know that  
11 Scott Cathcart's 2000 return was audited no change?

12 A. Yes, I knew that.

13 Q. And he was a 25 percent owner of Shenandoah, too?

14 A. That is correct. But my tax return was also audited.

15 Q. And it was no-changed, too?

16 A. There was a no-change letter.

17 Q. Thank you. That no-change to you was also sent by the  
18 IRS?

19 A. That was sent by the IRS after examining the tax returns.

20 Q. So did you think you were doing anything wrong?

21 A. No. I was pleased.

22 Q. This is exhibit -- Government's Exhibit 153.

23 And up here is your name, Yuri Debevc. Do you see  
24 that?

25 A. That's correct.

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1 Q. Did you receive this e-mail?

2 A. Yes, I did.

3 Q. Would you agree that Derivium did not provide tax advice?

4 A. Um, Derivium would not provide tax advice upon all of its  
5 employees.

6 Q. And you had the disclaimers on all your materials?

7 A. The disclaimers were on all loan documents; and indeed,  
8 that Derivium does not provide tax advice and that borrowers  
9 should seek advice of their own tax attorneys.

10 Q. And Patrick Kelly worked for you, the man that wrote  
11 this?

12 A. Yes, he did.

13 Q. And did y'all share the similar understanding, that Mr.  
14 Nagy did not provide tax advice to borrowers?

15 A. Yes, we did have the same understanding.

16 Q. Derivium's website --

17 A. Yes.

18 Q. -- was Mr. Nagy's name listed on that website?

19 A. I don't believe so.

20 Q. Was Mr. Nagy's name mentioned in the standard promotional  
21 materials?

22 A. Not that I'm aware of.

23 Q. And were you aware that the IRS was auditing Derivium?

24 A. Yes.

25 Q. And did you know that the IRS gave a no-change letter to

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1 Derivium?

2 A. Yes.

3 Q. Did you know that a financial products specialist was  
4 engaged in --

5 MR. CLUKEY: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. CLUKEY: Scope.

8 THE COURT: Pardon?

9 MR. CLUKEY: Outside the scope.

10 THE COURT: Scope of what?

11 MR. CLUKEY: Of my direct.

12 THE COURT: Overruled.

13 Q. Did you know?

14 A. Repeat the question, please.

15 Q. Did you know that a financial products specialist was  
16 engaged in the audit?

17 A. Yes.

18 Q. And being a business owner, did that no-change letter  
19 give you comfort?

20 A. Yes, it did.

21 Q. Now, Mr. Clukey went through a lot of questions about all  
22 these offshore entities. Do you remember going through that  
23 for the last three hours?

24 A. Yes, I do.

25 Q. In all these offshore entities in the e-mails, was there

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1 anything about Mr. Nagy's tax advice on the 90% Stock Loan?

2 A. Not that I'm aware of.

3 Q. And you believed these lenders were real, didn't you?

4 A. Yes.

5 Q. And in fact, tell the jury about visiting BVL's office in  
6 London?

7 A. In 2000 I visited London, ended up in this house in  
8 Mayfair, which is one of the -- one of those London -- one of  
9 the premier districts of London. I was a stone's throw from  
10 the United States Embassy, and there was an office for  
11 Bancroft.

12 There I met the attorney, Tim Scrantom, and also the  
13 attorney for Bancroft, and there were other individuals there  
14 at the time. And it was a very spacious conference room, so  
15 they gave me belief that, in fact, they were real. And there  
16 was a plaque on the building, Bancroft.

17 Q. And did you ever meet the financier of Bancroft?

18 A. Yes, I did.

19 Q. And what was their name?

20 A. The name Jeeves, it's father/son Jeeves. I forget  
21 their -- Brian, and I forget the other first name, the other  
22 initial.

23 Q. Can you tell the jury about your meeting with the Jeeves?  
24 Who were the backers of Bancroft?

25 MR. CLUKEY: Objection.

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1 THE COURT: Basis?

2 MR. CLUKEY: 801.

3 THE COURT: Not to that question.

4 Q. Can you tell the jury about your meeting with the Jeeves?

5 A. It was --

6 THE COURT: Can't tell them what the Jeeves said and  
7 all that, that would be hearsay, unless there was an  
8 exception. If they had a meeting, sure, fine.

9 THE WITNESS: May I respond?

10 THE COURT: Yeah.

11 THE WITNESS: I met the Jeeves in Lichtenstein, and  
12 this was prior to the visit through Bancroft in London, and I  
13 was at that time becoming a new member of Derivium, and it  
14 was more of a social visit. The individuals that were there  
15 were Charles Cathcart, myself and Mrs. Cathcart, and we  
16 chatted there for about maybe an hour and a half, two hours,  
17 and then took the plane back to Switzerland.

18 Q. And what was your understanding of the Jeeves'  
19 background?

20 A. That they were presented as financiers, and also an  
21 attorney, Kristina Phalen, who eventually made several visits  
22 to the United States.

23 And my understanding was that this was not the first  
24 meeting that they had with the Cathcarts; that they had other  
25 meetings with Scott Cathcart previous to that.

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1 Q. And so you physically went over there and shook these  
2 folks' hands?

3 A. That was the purpose of the trip to -- a social trip to  
4 say hello; introduce myself.

5 Q. And then were you aware of questioning about the BVL  
6 website?

7 A. Yes.

8 Q. And you saw it after meeting these folks. Did you  
9 believe it?

10 A. Well, I saw it later on and I believed it. There was a  
11 special access to that, and it requires the special access to  
12 the website, and which was granted to me by Tim Scrantom, the  
13 attorney for Bancroft.

14 And as a matter of fact, I made a copy of the  
15 website as -- a paper copy for myself to make reference to in  
16 the future.

17 Q. And you had an agreement with these folks, right? Not  
18 folks, but BVL?

19 A. Um, well, let's put it in context of time.

20 Bancroft became the lender sometime during 2000 and  
21 became the lender of record with -- all the documentation was  
22 done on Bancroft paper as of 2003. There was an agreement  
23 between Bancroft and Derivium Capital LLC for marketing and  
24 sales and marketing and administration. And subsequent to  
25 2000, January of 2003, Veridia, the company that I formed,

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1 had a marketing and administration agreement that was signed  
2 by Nigel Woods and the folks in Ioma, for administration for  
3 of the 90% Stock Loan.

4 Q. And that Nigel Wood fellow, his signature was on that  
5 document?

6 A. I believe so.

7 Q. And on the website, Nigel Wood was represented as being  
8 an officer of BVL, wasn't he?

9 A. That is correct.

10 Q. And you had a document signed by --

11 A. Not only that document signed, but the bank accounts,  
12 domestic bank accounts on behalf of BVL by 10 State Street,  
13 the attorneys for BVL. The account opening documents and  
14 brokerage documents were all signed by either Nigel Wood or  
15 one of the officers of Bancroft.

16 Q. And you went to work every day and you provided services  
17 to BVL, didn't you?

18 A. Yes, I did.

19 Q. That was your life? I mean, you did work with these  
20 folks?

21 A. Yeah.

22 Q. Because you went every day to work and you provided them  
23 services, did you believe that there was a real lender?

24 A. Yes, I did.

25 Q. Government's Exhibit 49. These were those monthly



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1 reports you sent to them?

2 A. Yes. These were monthly reports, um, that were internal  
3 documents and provided to Bancroft Ventures. And it was  
4 really based on these reports and the numbers on these  
5 reports that from the inception for Veridia was established.

6 Q. And for the services that Mr. Nagy provided to you, was  
7 there any reason to send this document to him?

8 A. There was no reason whatsoever for him to get this  
9 document.

10 Q. And you running Veridia and being the owner of Derivium,  
11 do you recall Nagy being on the recipient list for this  
12 document?

13 A. I don't recall him to be on the distribution list.

14 Q. And I believe you were here, but there is another monthly  
15 report for Optech?

16 A. That is correct.

17 Q. And the same question: Was that an internal report?

18 A. That was an internal report.

19 And there was also separate service agreements with  
20 Optech specifying that these are the responsibilities of  
21 Veridia to Optech.

22 Q. And again, because that was an internal document going to  
23 Bancroft, was there any reason to send it to Mr. Nagy?

24 A. No.

25 Q. And do you recall Mr. Nagy being on those distribution

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1 lists?

2 A. I do not recall Mr. Nagy being on the distribution lists.

3 Q. And both of those reports, they didn't go to borrowers?

4 A. No, they didn't go to borrowers, because this was a  
5 snapshot report for the management of the lender and for  
6 Veridia, so that it could calculate its compensation on a  
7 monthly basis.

8 Q. And I'm also going to show you Exhibit Number 16. And do  
9 you recall Mr. Clukey showing you this document?

10 A. Yes, I do.

11 Q. And it's called an In The Money loan, right?

12 A. Yeah. That is the name for this report.

13 Q. And would there be an "Out of the Money Loan," too?

14 A. No. There was a -- I don't recall that there was an Out  
15 of the Money Report because those negations -- which would  
16 not be negations -- that means that the payoff amount was  
17 significantly less than the loan amount. And under those  
18 circumstances, the expectation was that those individuals  
19 would not renew the loans and walk away, which they are  
20 entitled to.

21 Q. That's the impression that I don't want the jury to get  
22 because of all those negative numbers on the right-hand  
23 column. This report was for only those loans where the  
24 collateral exceeded the loan balance, right?

25 A. Those were the only ones. Those are the only loans that

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1 represented a potential financial risk to the company. The  
2 other reports, which are the majority of the loans, they did  
3 not represent financials to the company because the payoff  
4 amount was less than the collateral value, plus interest.

5 Q. And that's my question: The majority of the loans where  
6 the value of the collateral was less than the loan amount,  
7 those don't show up on these reports, do they?

8 A. No, they did not.

9 Q. Right.

10 And you gave this to the lender, right?

11 A. This was provided to the lender as part of their  
12 financial management, too, and this was also provided to  
13 Charles Cathcart on a more frequent basis than a monthly  
14 basis.

15 Q. That's right.

16 Because when you look at that total negative number,  
17 that's the lender's risk, right?

18 A. That is their snapshot of the lender's risk on that date  
19 if the world came to a grinding halt that day.

20 Q. And that's the risk the lender was to manage with the ten  
21 percent of the collateral value, right?

22 A. That is correct.

23 Q. And that's why the lender wanted to see that number, so  
24 he could -- so it could manage the risk?

25 A. That would be my impression.

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1 MR. CLUKEY: Government Exhibit 55. I believe it's  
2 in evidence.

3 THE CLERK: No.

4 THE COURT: Any objection to putting it into  
5 evidence?

6 MR. CLUKEY: No, Your Honor.

7 THE COURT: Okay. In evidence.

8 MR. COOPER: Thank you, Your Honor.

9 (Thereupon, Government's Exhibit Number 55 was  
10 received in evidence.)

11 Q. This is a memorandum from 10 State Street, which was  
12 Derivium's lawyers to Charles Cathcart.

13 And you see at the bottom, Mr. Debevc, your CC?  
14 A. Yes, I see. I see that.

15 Q. And at the bottom, the Bates stamps number. Does that  
16 indicate that it came out of your files?

17 A. Yes.

18 Q. And Jack Flader, was he with Optech?

19 A. He was one of the owners of Optech.

20 Q. And they were one of your lenders?

21 A. They were one of the lenders.

22 Q. And this document from Mr. Flader, was this because  
23 Optech was engaging in due diligence with Derivium?

24 A. I think Optech was engaging in due diligence in two  
25 levels: One was Derivium, and the other one they were

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1        setting up the standards because the -- for due diligence  
2        with borrowers -- because Optech's requirements for  
3        borrowers' identity were altogether different than the  
4        requirements by Bancroft Ventures's.

5        Q. So you are saying they were doing due diligence to make  
6        sure that the loan fully required, met their needs?

7        A. One, that it met their needs; and also, since the loan  
8        portfolio that they were acquiring, that those borrowers had  
9        not yet submitted the same documents that were required by  
10       Hong Kong authorities. They noticed that we need to gather  
11       that information to supply to Optech in Hong Kong to satisfy  
12       their local authorities.

13       Q. Okay. And did Mr. Scrantom, on behalf of Derivium,  
14       answer a lot of Mr. Flader's questions?

15       A. Um, yes, I believe that he did.

16       Q. And if you turn to question 6. Mr. Flader, on behalf of  
17       Optech, asks about the hedging strategies?

18       A. That's correct.

19       Q. And Tim Scrantom writes: "We briefly discussed the  
20       hedging strategies with respect to the collateral. As I  
21       understand them, Dr. Cathcart will send you a copy of an  
22       overview that explains the basis for the hedging strategy  
23       that has been adopted by the other stock loan lenders in the  
24       past.

25       "Essentially, this strategy provides that in many

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1 cases the underlying collateral is actually sold with a  
2 portion of the sales proceeds being used to fund a reserve  
3 account or a purchase of an option list to require the  
4 securities at the loan maturity. This strategy is really  
5 only applicable to stock loan transactions."

6 Mr. Debevc, I think you told Mr. Clukey that your  
7 understanding of the first part of the sale is, what Dr.  
8 Cathcart explained to you, is the first part of the hedge,  
9 right?

10 A. That was the first part of the hedge, to mitigate the  
11 risk of the stock declining in value immediately after  
12 receipt.

13 Q. And what's written here was consistent with your  
14 understanding of the first part of the hedge, right?

15 A. It was part of the process that was in existence when I  
16 came there, yes.

17 Q. And then also, the lawyer, Tim Scrantom from 10 State  
18 Street, tells them in the second part is a use of buying or  
19 the purchase of an option to require these securities.

20 So you use the money to buy an option to buy back  
21 the stock in the market. Is that called a call?

22 A. Well, I think that's a way of simplifying it, but it  
23 could be described as such.

24 Q. Well, is it describing some kind of hedging strategy of  
25 buying puts or calls?

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1 A. That is correct.

2 Q. And again, was that your understanding of the hedging  
3 strategy?

4 A. It is the Optech.

5 Q. Yes, the lenders were doing?

6 A. The lenders were doing. That was what was described to  
7 me that -- what was happening.

8 Q. And did you believe your lawyer?

9 A. Well, I believed the attorney and I believed Charles  
10 Cathcart, who designed the program.

11 Q. And again, because Optech is doing due diligence to  
12 buying this loan portfolio, they are doing all this work, was  
13 it your belief that Optech was a real lender?

14 A. Yes. Um -- and both Mr. Sullivan and Mr. Flader signed  
15 the service agreement with Veridia to provide services to  
16 Optech, so -- and I see the owners of the enterprise or  
17 business signed a service contract. And they agree on a  
18 compensation as a service company, outsource service  
19 provider.

20 Q. And again, you went to work day after day providing these  
21 services?

22 A. In addition, they -- these same individuals reached the  
23 bank accounts and brokerage accounts. And then through a  
24 power of attorney, giving the power to Veridia to accomplish  
25 the requirements of the service agreement.

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1 Q. And again, Dr. Cathcart's background, what was your  
2 understanding of his background?

3 A. I worked for Dr. Cathcart in the mid-eighties at  
4 CitiBank, and he was at that time the epicenter of the  
5 development of derivatives. Derivative products had not yet  
6 had the name as derivatives.

7 So I would -- I ended up working with him,  
8 implementing some of the strategies that he designed in the  
9 marketplace.

10 Q. And I want to show you Exhibit 38, which is Derivium's  
11 marketing materials.

12 THE CLERK: Is that plaintiff or government?

13 MR. COOPER: It's Government Exhibit 38, and it's in  
14 evidence.

15 Q. And again, he talks about this hedging strategy being his  
16 "Coca-Cola syrup". Do you recall that?

17 A. Yes, I do.

18 Q. And he talks about a proprietary hedging strategy?

19 A. I think everybody on Wall Street thinks they have a  
20 proprietary hedging strategy.

21 Q. After the recent events, I think they think a lot.

22 My question is: Dr. Cathcart was the hedging expert  
23 at Derivium, correct?

24 A. He's the one that designed the program, yes.

25 Q. And in these marketing materials, and as an owner of



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1 Derivium, did you ever look to Mr. Nagy for advice about  
2 hedging strategies?

3 A. No, I did not.

4 Q. Did you ever look to him for advice on how to implement  
5 Risk Management strategies?

6 A. No, I did not.

7 Q. And in the marketing materials, there are certain  
8 statements in here where they derive, and it says, "hedging  
9 transactions are established to protect the value of the  
10 pledged collateral".

11 A. Yes.

12 Q. Is that a statement that Mr. Nagy would have caused  
13 Derivium to make?

14 A. I don't believe so.

15 Q. Right.

16 Because Dr. Cathcart was the expert in hedging,  
17 correct?

18 A. And the advertising was designed by Scott Cathcart.

19 Q. Right.

20 And Scott Cathcart was responsible for the --

21 A. He was the marketing guru.

22 Q. And Mr. Nagy was an outside accountant, right?

23 A. That is correct.

24 Q. And the people that have the ultimate say at Derivium  
25 were Charles Cathcart, right?

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1 A. Correct.

2 Q. And Scott Cathcart, with respect to marketing materials?

3 A. With respect to marketing materials, without question.

4 Q. And as an owner of Derivium, did Mr. Nagy have the  
5 ultimate say on what went out, was put in these promotional  
6 materials?

7 A. I don't believe so. And I don't know if he was solicited  
8 or not.

9 Q. And also with the website?

10 A. The website, that was, um, the only -- the website was  
11 designed by a professional firm contacted by Scott Cathcart.  
12 The only -- I can't imagine why Mr. Nagy would be involved.

13 Q. As an owner, you couldn't envision it?

14 A. I said I could not envision.

15 Q. Oh, you could not envision it?

16 A. Right. It could be Mr. -- just check on the math.

17 THE COURT: Are you going on to another subject  
18 again?

19 MR. COOPER: Pardon?

20 THE COURT: Are you going on to another subject  
21 again?

22 MR. COOPER: Yes, Your Honor.

23 THE COURT: Why don't we take an afternoon break at  
24 this time.

25 Ladies and gentlemen of the jury, we'll start again

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1 in about 15 minutes. Thank you.

2 (Thereupon, the jury retired from the courtroom.)

3 THE COURT: Okay. Mr. Clukey, how about giving me  
4 about 30 seconds as to your objection on Exhibit 63, so I can  
5 think about it while I'm upstairs.

6 MR. CLUKEY: Yes, Your Honor.

7 The document was prepared in anticipation of  
8 litigation, Your Honor, and it's not a business record, it's  
9 not an opinion, which we believe Mr. Cooper is going to  
10 represent it as -- in fact it says in it, it's simply a  
11 statement of fact, which is exactly what lawyers do as far as  
12 preparing -- well, let me back up.

13 It's double hearsay in there saying it's facts that  
14 have been transmitted to the client. And it says in it it's  
15 not an opinion. And we haven't offered an opinion about  
16 this. We will do so maybe at later time, but they haven't  
17 and they don't ever.

18 THE COURT: All right. And your response to that?

19 MR. COOPER: I'm not -- in anticipation of  
20 litigation -- I mean, this is an IRS investigation. I don't  
21 know if it's in anticipation of litigation, but it is a  
22 response to the IRS. So I don't know how work product comes  
23 into play if it was disclosed over to the IRS.

24 Secondly, the Government with Mr. Debevc brought up  
25 Mr. Nagy was still giving advice when the IRS was challenging

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1 the position. I'm just showing they were fighting back, they  
2 didn't roll over. It wasn't a foregone conclusion.

3 And they also brought it up with the California  
4 Franchise Tax Board. And part of this addresses that  
5 position, as well.

6 We are not saying it's a tax position; we are just  
7 saying that there was just basis for it. It wasn't a  
8 foregone conclusion when the IRS started looking at the  
9 transaction.

10 MR. CLUKEY: Your Honor, we would add that he's  
11 already testified to that. All that information is already  
12 in the record. We don't need this hearsay document, which is  
13 not an opinion, and clearly states that it's not. And it was  
14 prepared in anticipation of litigation, which is clearly what  
15 it says.

16 THE COURT: It may have been, but it's also  
17 transmitted to the IRS.

18 MR. CLUKEY: The other thing is B. John Williams was  
19 on their witness list, and he's not here to talk about this.  
20 That's very curious.

21 MR. COOPER: Well, I mean, he's \$2,000 an hour, and  
22 I mean --

23 THE COURT: Well, you know, for Washington, that's  
24 not so bad. The last Washington thousand dollars-an-hour  
25 lawyer that I had in this courtroom was worth it.

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1                   So I can't -- I want to see a \$2,000 dollar lawyer.  
2                   You may want to bring him down. I've never seen one.

3                   MR. COOPER: But I believe I laid the business  
4                   record.

5                   THE COURT: I'll take a look at it, okay?  
6                   Thanks.

7                   (Thereupon, there was a brief recess.)

8                   THE COURT: Ready to go?

9                   MR. COOPER: Yes, Your Honor.

10                  MR. CLUKEY: The case of *Palmer vs. Hoffman*, it's a  
11                  Supreme Court decision, 318 U.S. 109, and it says that when a  
12                  document is prepared for purposes of litigation, that it does  
13                  not meet the hearsay exception for business records.

14                  THE COURT: We are doing some additional research on  
15                  it, so I'm not going to have a decision for you until  
16                  tomorrow anyway.

17                  MR. COOPER: So would that mean we -- can we release  
18                  him for now and try to push it along with the transcripts  
19                  of --

20                  THE COURT: Sure. Don't you have other things you  
21                  were going to ask him?

22                  MR. COOPER: I'm almost done.

23                  THE COURT: Good.

24                  THE WITNESS: Thank you.

25                  THE COURT: I'm supposed to make the right decision,

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1 and I can't make a snap decision, and we'll go from there.

2 So go ahead and continue your examination and finish  
3 it up. And if we -- if I decide it's coming in, we can  
4 always bring him back for a short period of time. If not, no  
5 harm no foul.

6 Okay. Good. Except for Mr. Debevc, who probably,  
7 once he leaves here, he probably never wants to walk in these  
8 doors again. He's spent more time in this courthouse than I  
9 have in the last couple of years.

10 THE WITNESS: Not by design.

11 THE COURT: All right. Bring the jury in for me,  
12 please.

13 (Thereupon, the jury returned to the courtroom.)

14 THE COURT: Okay. Mr. Cooper?

15 MR. COOPER: Thank you.

16 Q. Are you ready, Mr. Debevc?

17 A. Yes.

18 Q. I'm going to show you what's Exhibit 236, Government,  
19 it's already been admitted into evidence. This is the  
20 valuation confirmation report.

21 Was this document generated from y'all's back  
22 office?

23 A. Um, this would have been a document that would be  
24 generated as a consequence of transfer of securities from the  
25 borrower's brokerage account into the lender's brokerage

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1 account.

2 Q. And was this document generated by your section of the  
3 office?

4 A. This was generated in the administration section of the  
5 office, and they would calculate the value as of -- the value  
6 of the stock as of the time that it was received --

7 Q. Okay.

8 A. -- and booked in the lender's account.

9 Q. And this document, did Mr. Nagy cause it to be sent to  
10 anyone?

11 A. I don't believe so.

12 Q. And again, do you recall if Mr. Nagy had any input into  
13 what's in this document?

14 A. No, the -- I don't believe that.

15 Q. And the second page is the activity confirmation. And  
16 again, is this a document generated from your office?

17 A. This would have been a document generated as a  
18 consequence of the sale of the stock; therefore, activity  
19 confirmation. And that would represent the actual value of  
20 the dollar amount received for -- from the sale of the stock.  
21 And based on the value received, the 90 percent was  
22 calculated as to what they were owed.

23 Q. My question was: Was it generated from your office?

24 A. Yes, it was.

25 Q. Okay. Did Mr. Nagy have any input in what's in that

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1 document?

2 A. No.

3 Q. And did he --

4 A. Not that I'm aware of.

5 Q. And did he cause Derivium to send it out to borrowers?

6 A. No. This was part of the process notifying the borrowers  
7 that the stock has been valued in the amount of proceeds to  
8 be disbursed.

9 Q. The next is Exhibit 155, Government.

10 MR. COOPER: Which I believe is also admitted into  
11 evidence?

12 THE CLERK: Yes.

13 Q. This is the quarterly account statement.

14 And again, was this document generated from your  
15 office in Derivium?

16 A. Yes, it was.

17 Q. And again, did Mr. Nagy have any input into this  
18 document?

19 A. Not that I'm aware of.

20 Q. And did Mr. Nagy cause this document to be sent out to  
21 borrowers?

22 A. No, he did not.

23 Q. And again, it -- Mr. Nagy was not an owner of Derivium,  
24 correct?

25 A. No, he was not.



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1 Q. He was not part of management, was he?

2 A. No, he was not.

3 Q. And he didn't have final say on what documents looked  
4 like before they were sent out to borrowers?

5 A. Not that I'm aware of.

6 Q. I'm going to show you Government Exhibit 189. It was  
7 about this alleged proposal to administer Mr. Nagy sent you  
8 to administer loans.

9 Do you recall those questions by Mr. Clukey?

10 A. Yes, I do.

11 Q. And I forgot, which lender were you going to administer  
12 loans for?

13 A. Well, Veridia was ceasing operations and was giving up  
14 their administering of loans for both Bancroft and for  
15 Optech.

16 Q. And did this proposal go anywhere?

17 A. No, it did not.

18 Q. So this Newco was never formed?

19 A. No, it was not.

20 Q. It's basically -- this was -- it never happened?

21 A. Nothing ever materialized out of that document.

22 Q. And the purpose of the proposal was to administer loans  
23 that were already in existence, right?

24 A. It was only the FRN loans because of the nature of the  
25 loan.

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1 Q. My question was: This was to administer loans that had  
2 already been done?

3 A. That is correct.

4 Q. And in fact, Mr. Nagy wrote: "Newco will be a domestic  
5 entity and will perform loan administration strictly related  
6 to FRN transactions. Newco will not be in the possession of  
7 client files and will not handle any loan initiation  
8 processing assuming that there might be any future FRN  
9 transactions completed."

10 Doesn't that mean that Mr. Nagy was telling you he  
11 would not be involved with the initiation of FRN  
12 transactions?

13 A. That is correct.

14 Q. Because he gave advice to Derivium that said, FRN  
15 transactions were sales for tax purposes, didn't he?

16 A. I believe that that was the advice in one of his memos.

17 Q. And he's trying to follow his own advice by not  
18 initiating these transactions, right?

19 A. That's what the document speaks.

20 Q. Government's Exhibit 233 that Mr. Clukey asked you about.  
21 Actually for now, I'm going to hand it to you, so you can  
22 look at it.

23 Q. And my question is, while you are reading it, is Mr. Nagy  
24 providing any tax advice in there about whether the  
25 90 Percent Stock Loan transaction is a loan or sale for tax

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1 purposes?

2 A. This is basically a to-do list, if under certain  
3 circumstances, but it's not tax advice.

4 Q. And what's the date of that document?

5 A. July 3, 2000.

6 Q. Okay. When did Optech actually become the lender?

7 A. The first transaction that I can recall Optech being the  
8 lender would be sometimes in 2003.

9 Q. Three years later, is that what you are saying?

10 A. Yeah.

11 Q. So what y'all were working on here, too, never came to  
12 fruition, did it?

13 A. Nothing. Not in that format.

14 Q. And then Mr. Clukey asked you in point three about  
15 applying for a federal I.D. number. Isn't that a tax number?

16 A. Yes, it is.

17 Q. And is there anything -- you think he was asking about  
18 that's wrong about trying to apply for a tax number?

19 A. I'm not an accountant, so -- I believe so.

20 Q. Is that how you form entities, you get tax numbers?

21 A. I think it's one of the requirements.

22 Q. Mr. Clukey also showed you Government's Exhibit 264.

23 Is Mr. Nagy on this e-mail?

24 A. Yes. He is originating this e-mail.

25 Q. Is he providing tax advice in this e-mail?

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1 A. No, he is not providing tax advice.

2 Q. Is the 90% Stock Loan even mentioned?

3 A. No, it is not.

4 Q. Derivium Capital U.K. That was another company that  
5 never did anything, right?

6 A. To my recollection, I don't think they ever did any  
7 loans.

8 Q. They sent Mr. Sandifer over there to investigate, but  
9 they didn't do it because of the events of 9-11, and whatnot?

10 A. They didn't do it for an assortment of reasons. And I  
11 think that stems as to why it was not.

12 Q. And the ten percent that was left between the value of  
13 the loan and the collateral, was that the lender's property?

14 A. That was income to the lender.

15 Q. Well, if it's income to the lender, it's the lender's  
16 money, isn't it?

17 A. That would be my belief. Any time you sell something and  
18 you get a profit, that is that entity's money.

19 Q. And Mr. Clukey was talking to you about the flow of  
20 money. Do you remember that?

21 A. That is correct.

22 Q. And the investments and the startup companies, you said  
23 were accounted for as investments from the lender down into  
24 the startup entities?

25 A. That is correct.

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1 Q. And Mr. Clukey showed you Government's Exhibit 36.

2 Government's Exhibit 36.

3 And it said right there that -- he showed you a  
4 couple of investments, but isn't the lender an investor here?

5 A. Yes, he is.

6 Q. It's not really strange if someone that owns a company  
7 would loan money to it, is it?

8 A. I beg your pardon?

9 Q. If someone that owns part of a company would loan money  
10 to it?

11 A. I think that that's natural that they would want to  
12 participate in that number.

13 Q. So you didn't think anything was odd about this?

14 A. No.

15 Q. And Mr. Debevc, as an owner of Derivium, and from the  
16 years of 2000 until 2005, did you believe that anything --  
17 that Derivium was engaged in any wrongdoing during that  
18 period?

19 A. I did not.

20 MR. COOPER: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. CLUKEY:

23 Q. Mr. Debevc, you started off your testimony this morning,  
24 there is a fairly large judgment against you for fraud; is  
25 that correct?

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1 A. That is correct. And that is being appealed.

2 Q. And it's being appealed.

3 So anything you say here could affect that appeal;  
4 is that correct?

5 A. I assume so.

6 Q. Mr. Debevc, you talked about some meeting with the  
7 Jeeves?

8 A. Sure.

9 Q. Alex and Brian Jeeves?

10 A. Thank you for reminding me one of the names, I  
11 couldn't --

12 Q. Of The Jeeves Group; is that correct?

13 A. Correct.

14 Q. Now, your partner, Charles Cathcart, when Derivium was  
15 getting sued, Derivium Capital was getting sued in 2005, May  
16 of 2005, your partner provided an affidavit, because the  
17 Jeeves, who were in Liechtenstein, right? That's where The  
18 Jeeves Group is, in Liechtenstein?

19 A. Correct.

20 Q. Lindsay AG, this is actually -- they are involved in this  
21 company, Lindsay AG?

22 A. I didn't know the relationship between Lindsay AG and the  
23 Jeeves, but I've seen that name before.

24 Q. Well, The Jeeves Group got sued, didn't they, as part of  
25 some of these defaults?

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1 A. They did.

2 Q. And they got pretty upset about it, didn't they?

3 A. I think everyone is upset when you get sued.

4 Q. And your partner, Charles Cathcart, wrote a letter saying  
5 the Jeeves didn't have anything to do with this scheme,  
6 didn't they? Didn't Charles Cathcart?

7 A. I saw documents to the contrary which were not admitted.

8 MR. CLUKEY: A copy of Exhibit 260, please.

9 Q. Mr. Debevc, take a look at that document, please.

10 A. Yes.

11 Q. Do you recognize the signature on there?

12 A. Yes, I do.

13 Q. Whose signature is that?

14 A. Charles Cathcart.

15 MR. CLUKEY: Your Honor, we would ask to move in  
16 Exhibit 260.

17 MR. COOPER: 802.

18 MR. CLUKEY: Exception 801(d)(2)(E), Your Honor.

19 THE COURT: Okay. Sustained -- I mean, overruled.  
20 In evidence.

21 (Thereupon, Government's Exhibit Number 260 was  
22 received in evidence.)

23 MR. CLUKEY: Pull up 260, please.

24 Q. So you just said that was Charles Cathcart's signature on  
25 the bottom, right?

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1 A. I recognize that as his signature.

2 Q. Okay. Let's see what this letter says. May 5, 2005.

3 Veridia is still in existence, correct?

4 A. Correct.

5 Q. And Robert Nagy issues his proposal to do this FRN  
6 program after this, correct?

7 A. Correct.

8 Q. So it says: "As the undersigned, Charles Cathcart hereby  
9 confirms that neither The Jeeves Group nor any of its  
10 personnel or any of its companies are the cause of  
11 nonrepayment to any creditors of Derivium Capital LLC or  
12 Bancroft Ventures Ltd.

13 "Furthermore, he's also confirmed that neither the  
14 Jeeves group or any of its personnel or companies are or were  
15 involved in the running of neither Bancroft Ventures, Ltd.  
16 business affairs, nor does it supply any director, officer,  
17 manager for that company.

18 "Sincerely Charles D. Cathcart."

19 Q. Did I read that correctly, Mr. Debevc?

20 A. You did. You read that correctly.

21 And this was in 2005. However, in 2000, in the year  
22 2000, the document which was not admitted --

23 THE COURT: Wait a minute. We can't talk about  
24 something that's not admitted, Mr. Debevc.

25 THE WITNESS: The attorneys prevented me from



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1 talking.

2 Q. And in talking about this office of Bancroft U.K. I think  
3 you said you went over to; is that right?

4 A. I was in that.

5 Q. Bancroft U.K.?

6 A. Negative. Yeah. Bancroft U.K.

7 Q. Bancroft U.K. actually shared office space with one of  
8 your companies, didn't it?

9 A. That was operated at the time in, I think in 2000, I  
10 think 2001, 2002, they shared office. They had offices in  
11 the same building as Derivium Capital U.K.

12 Q. Derivium Capital U.K., your company?

13 A. Correct.

14 Q. So we understand the timing here: Bancroft isn't even  
15 formed until the end of 2000, correct?

16 A. Sometime in 2000.

17 Q. Sometime in 2000.

18 And so you are saying in 2001, there is another  
19 company Bancroft -- which isn't even on here -- Bancroft  
20 U.K., and that shares office space with your company,  
21 Derivium Capital U.K.; is that correct?

22 A. That's correct.

23 Q. It also shares office space with your lawyer, 10 State  
24 Street, correct? Don't they have an office there, too?

25 A. I don't know that he had an office, but he would have

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1 frequented in the office of his client Bancroft U.K.

2 Q. And there were other employees of -- former employees of  
3 Derivium Capital that were over there, weren't there,  
4 Jonathan Sandifer?

5 A. Jonathan Sandifer and Catherine Sandifer.

6 MR. CLUKEY: Give me a copy of Exhibit 3, please. Is  
7 this in evidence?

8 THE CLERK: Yes.

9 MR. CLUKEY: That makes it easy.

10 Q. Mr. Debevc, is that your signature there?

11 A. Yes, it is.

12 Q. And so we see here, on April 7th, April 7th, 2004, you  
13 are writing to Bancroft Ventures in Isle of Man. You are  
14 saying: "Dear sirs, this letter shall serve to confirm that  
15 Veridia Solutions LLC, a limited liability company under the  
16 laws of South Carolina, has been performing as an independent  
17 representative agent in the territory of North America since  
18 January 1st of 2003."

19 That's almost a year and a half later you are  
20 writing Bancroft to tell them what you have been doing,  
21 right?

22 A. Actually, the document was originated earlier. It was  
23 not signed. That document presentation was created by the  
24 attorneys for Bancroft Ventures, for Bancroft 10 State  
25 Street.

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1 Q. So Derivium lawyers created the document?

2 A. Derivium attorneys and Bancroft attorneys.

3 Q. We stated here 10 State Street was everybody's lawyers  
4 here, right?

5 A. It appears that way.

6 Q. So we go to the next page here. This is another cover  
7 letter writing to Bancroft: "Please find enclosed two signed  
8 copies of financial representation administration and  
9 processing agreement.

10 "After having these documents executed by Bancroft,  
11 retain one copy in your files and return one copy to my  
12 attention."

13 That's your signature on the bottom, right?

14 A. That's correct.

15 Q. Let's go to the end of this document.

16 MR. CLUKEY: Is this the last page? Sorry. There we  
17 go.

18 Q. "Bancroft Ventures Ltd." That's not signed by them, is  
19 it?

20 A. I never signed it. There is a signed copy in existence.

21 Q. You signed this.

22 I guess my point is you signed this copy; you are  
23 the one controlling this whole transaction -- this agreement  
24 you set in place earlier that you testified about -- you are  
25 the one controlling this; you are the one sending it off to

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1 these folks to just fill in their name, right?

2 A. The document was provided to me by 10 State Street and  
3 given to --

4 MR. CLUKEY: Let met have a copy of 176, please.

5 Q. Do you recognize that document, Mr. Debevc?

6 A. I was looking at the copy when mailed. It was around  
7 2003.

8 Q. So we are talking about Government's Exhibit 55 earlier,  
9 which was written in April of 2003, if you recall, the due  
10 diligence letter?

11 A. Yeah.

12 Q. So this is after that, right, October?

13 A. That is correct.

14 Q. And that's to Jack Pfleiderer, right?

15 A. That's what the caption reads.

16 Q. To Jack Pfleiderer. So he was with Optech?

17 A. He was with Optech. And it was written by Charles  
18 Cathcart.

19 Q. Okay. Let's go to the next page. And here we are  
20 talking about what Optech is actually doing, right?

21 MR. CLUKEY: Your Honor, we would ask to move this  
22 into evidence.

23 MR. COOPER: Your Honor, we have a 402, 403 on  
24 the --

25 THE COURT: Well, 402 is solved because it's a reply

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1 to what you brought up in cross-examination of Mr. Debevc  
2 with regard to the due diligence of Optech.

3 And 403, I don't think its prejudicial value greatly  
4 outweighs -- vice versa -- unfair prejudice. So I'll  
5 overrule it.

6 (Thereupon, Government's Exhibit Number 176 was  
7 received in evidence.)

8 MR. CLUKEY: Let's go to the second page.

9 Q. So we see here is a letter: "Charles, thanks for your  
10 e-mail. I marked it on my calendar. Optech has its own  
11 office within our offices and the Optech name is on the sign  
12 board; however, we do not have Optech business cards or  
13 brochures or other stuff. Is that okay? Jack Pfleiderer."

14 And what's Charles?

15 A. Well, I'm -- I don't see the end communicated on at this  
16 point in time with this exchange.

17 MR. CLUKEY: Let's go to the prior first page.  
18 Actually, can you back up for a second? So -- there.

19 Q. You do get this whole e-mail string, right, Mr. Debevc?

20 A. Eventually, this was forwarded to -- or sent to me to  
21 forward to Mark Broadwater at 10 State Street.

22 Q. Okay. So let's see what Charles sent you: "Jack, I  
23 think the lack of brochure is easily explained" --

24 THE COURT: Slowly.

25 Q. "Optech depends upon Derivium for its marketing and

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1 sales. It would be best, however, if you could have some  
2 business cards made up. Any chance that could be done  
3 locally on an expedited basis? Mark tells me you are a  
4 complete package.

5 "As a backup, we'll check and see if we can get it  
6 done stateside and courier it to you. We would like to have  
7 cards for yourself, Marie and Jackie. Please provide  
8 relevant details. We need to get them done here for Optech  
9 at this point in time."

10 Optech is being set up for Derivium's behalf, isn't  
11 that right?

12 A. I believe that the document speaks for itself. I don't  
13 know. Optech was already set up by that time and the loans  
14 going. I'm not aware of any of this being set up. Optech  
15 was operational.

16 Q. Optech had already been set up, hadn't it?

17 A. Yes.

18 MR. CLUKEY: I need a copy of Exhibit 225, please.

19 Before we look at that, would you pull up 223?

20 Q. It was set up by Bob Nagy. He helped form the company,  
21 didn't he? "Action items for DDA, Optech transition," way  
22 back in 2000?

23 A. Well, I don't know that all of those items were  
24 implemented at that time. I think that was -- this was a  
25 to-do list or a plan, but I'm not aware that it was executed

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1 at that point in time.

2 Q. Well, we know that Optech is actually set up, right?

3 A. Optech is being set up, and this is a, as the legend  
4 said, a checklist, a to-do checklist in July, 2000.

5 Q. Right.

6 And it does -- eventually we know that Optech is --

7 A. Eventually, it does happen. I don't know the timing of  
8 it. I know that at the beginning of -- in the first half of  
9 2003, Optech was operational.

10 Q. And we talked about that earlier on your direct. Optech  
11 was set up, but the shelf company -- it was put on the shelf.  
12 And then when you had litigation problems right around here,  
13 then Optech comes off the shelf and it picks up the loan  
14 business, doesn't it?

15 A. You are asking me to represent a legal opinion. I'm not  
16 an attorney to -- this was a product of the attorneys and the  
17 senior partner, Charles Cathcart.

18 Q. Okay. You are looking at 225.

19 MR. CLUKEY: Your Honor, we would ask to move this  
20 document into evidence. Can you back out so you can see?

21 THE COURT: Any objection, Mr. Cooper?

22 MR. COOPER: 402, 403.

23 MR. CLUKEY: Your Honor, I would ask you to focus on  
24 the second bullet and the last name there -- which Mr. Cooper  
25 brought up -- at the top that is showing for the contact.

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1 THE COURT: Okay. I'll overrule your objection.

2 (Thereupon, Government's Exhibit Number 225 was  
3 received in evidence.)

4 Q. So here we see a memo that Bob Nagy is being cc'd on.  
5 Tim Scrantom is saying: "I've prepared the following  
6 checklist of items remaining to be completed for the offshore  
7 restructuring stock loan transactions. Clients have  
8 indicated they would like to keep July 15, 2000 as the day  
9 upon which they convert to the new operational model."

10 And then if we see that second bullet right there.  
11 "Create a Hong Kong international business company to be  
12 named Optech Ltd., so Hong Kong Optech, an entity to manage  
13 same. Contact Jack Flader."

14 That's the guy who ultimately does work at Optech,  
15 correct?

16 A. I'm not -- you are asking me to comment on a document  
17 that I was not copied on and I was not privy to before.

18 Q. Mr. Debevc, I'm not -- I'm just asking you a question, to  
19 look at this document. Jack Flader was the person that  
20 Lindsey Cooper just asked you about?

21 A. That's correct. He is one of the owners of Optech.

22 Q. So Bob Nagy knows who he is back in 2000, doesn't he?

23 A. That's what this document would suggest, but I don't know  
24 that.

25 Q. And in fact, Optech is created and Jack Flader is



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1 involved with it, correct?

2 A. Ultimately, Jack Flader is involved in Optech.

3 MR. CLUKEY: If you can pull up Exhibit 189?

4 Q. Mr. Cooper just asked you about this on cross. And if we  
5 go to the third page, this document again, this is -- this is  
6 Mr. Nagy's proposal to you regarding the FRN transactions,  
7 correct?

8 A. That's correct.

9 Q. Okay. If we go to the third page. We didn't talk about  
10 the amount of money he was proposing to make off of this.

11 And he's saying: "All interest payments will be  
12 deposited to an account or accounts in the name of the  
13 lenders in consideration for the administration services.  
14 Newco will be paid 80 percent of the amounts received.  
15 Twenty percent will remain with the lender. Newco will not  
16 have any control over the bank accounts."

17 So if you recall, if you go back to the first page  
18 of this document, or the second page -- so this is going to  
19 be \$100,000 a quarter. And I think in your -- the document  
20 basically says, you are not really going to have to do  
21 anything, \$100,000 a quarter, and you are going to keep  
22 80,000 of that and the lender would get 20,000. Is that  
23 correct?

24 A. I think you are telling me that. You say "you guys,"  
25 this was a proposal that -- it was a proposal that was made

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1 that was not accepted; and therefore, for you to tell me that  
2 I'm going to keep certain amount of money is ridiculous.

3 Q. You know what, Mr. Debevc? I wasn't meaning to suggest  
4 that, because you rejected this proposal, didn't you?

5 A. I did not accept it. That's correct. I rejected the  
6 proposal.

7 Q. Thank you.

8 RECROSS-EXAMINATION

9 BY MR. COOPER:

10 Q. Charles Cathcart took you to go see the Jeeves Group in  
11 Liechtenstein, right?

12 A. That's correct.

13 Q. He also sent you to the U.K. to go see the Bancroft  
14 offices, didn't he?

15 A. Actually, he accompanied me there.

16 Q. And then Exhibit 260 that he said -- first of all, do you  
17 know if Bob Nagy saw this document?

18 A. Which document is that again?

19 MR. COOPER: I'm sorry, Ms. Gail.

20 THE CLERK: Okay.

21 THE WITNESS: I don't know.

22 Q. And after traveling with Charles to go see all these  
23 people, he all of a sudden says it didn't exist, right?

24 A. I don't know what circumstances led him to write this.

25 Q. Let me ask you this: After reading this letter, what you

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1 experienced through your employment at Derivium, do you think  
2 Charles did all this and hid it from you?

3 A. I don't know what to believe at this point in time, but I  
4 don't believe so.

5 Q. There was a lot of confusion, isn't there?

6 A. That's correct.

7 Q. And you don't know what's real and fake anymore, do you?

8 A. I thought I knew what was real in 2002. I thought -- I  
9 certainly knew what was real in 2003 dealing with these  
10 people. As the time goes on and I see these documents, I  
11 have to question that.

12 Q. Right.

13 And your question is, Charles Cathcart set all this  
14 up and he hid it from you. That's the question in your mind,  
15 isn't it?

16 A. I think I'm curious as a result of not being told  
17 everything.

18 MR. COOPER: Thank you.

19 THE COURT: Okay. Thank you, Mr. Debevc.

20 MR. CLUKEY: We've got a video.

21 THE COURT: Sure. This is a video deposition of?

22 MR. CLUKEY: It's a video deposition of Nigel Wood,  
23 another Isle of Man resident.

24 MR. COOPER: Your Honor, Mr. Debevc needs to be back  
25 in the morning depending on --

1 THE COURT: Well, you've got his contact  
2 information. I don't know whether I'll make a ruling, you  
3 know, a decision tonight or -- so I'll have Frank e-mail you  
4 and you can e-mail him, but you don't have to show up again,  
5 Mr. Debevc, until somebody calls you.

6 THE WITNESS: Right now, I'll be happy to show up  
7 with about an hour's notice.

8 THE COURT: You can stay if you want to; you can  
9 leave if you want to. We may see you again; we may not.

10 (Thereupon, the video deposition of Nigel Wood was  
11 played for the jury.)

12 MR. CLUKEY: Your Honor, this document is in  
13 evidence. Can we put it up side by side?

14 THE COURT: Sure.

15 (Thereupon, the video deposition of Nigel Wood  
16 resumed.)

17 MS. WEIS: Your Honor, this is Government 42, which  
18 is also in evidence.

19 Your Honor, this is Government Exhibit 40 that will  
20 be referenced next.

21 THE COURT: Okay.

22 MR. CLUKEY: There may be ten minutes left.

23 (Thereupon, the video deposition of Nigel Wood  
24 resumed.)

25 That's the end of the video, Your Honor.

1 THE COURT: It's as good a time as any to quit right  
2 now.

3 So ladies and gentlemen of the jury, we'll start at  
4 9:30. Don't let anyone discuss the case with you, don't make  
5 up your mind until you've heard all the evidence in the case  
6 and my instructions on the law.

7 So we'll see y'all again at 9:30.

8 (Thereupon, the jury retired from the courtroom.)

9 THE COURT: Okay. Mr. Cooper, it's my understanding  
10 from the basis of our research, is that you -- your Exhibit  
11 Number 63 is -- obviously, it's hearsay, but you have an  
12 exception under the Hearsay Rule, 803(6), it's a business  
13 record. That's the basis of your moving it into evidence?

14 MR. COOPER: Yes, Your Honor.

15 THE COURT: Anything else?

16 MR. COOPER: I realize that the Socks deposition we  
17 gave you was prior to your motion in limine ruling about only  
18 communications between Nagy and the IRS.

19 THE COURT: Uh-huh.

20 MR. COOPER: And if you would permit me, without  
21 waiving my objection, I would cut it down significantly for  
22 your reading time.

23 THE COURT: Okay. That's in your case, right?

24 MR. COOPER: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. COOPER: Just so you don't go home and read this  
2 all. I'm just trying to --

3 THE COURT: I appreciate it, thank you. You know,  
4 if it gets late tonight and you are fired up, read the  
5 deposition and go to sleep.

6 MR. COOPER: I have a hard time sleeping anyway.

7 THE COURT: All right. And so we'll see y'all at  
8 9:00 in the morning.

9 MR. CLUKEY: There were a couple of pending  
10 objections to I guess your rulings. We want to play those  
11 videos tomorrow.

12 THE COURT: Tomorrow morning.

13 MR. CLUKEY: You took those earlier. I don't know  
14 if you had a chance to rule on those.

15 We have got them back. Okay. So we are done; is  
16 that right?

17 MR. COOPER: One point on the Scrantom deposition.

18 Mr. Nagy was not a party in that case, and the  
19 Hearsay Rule about -- he wasn't able to develop to  
20 cross-examine him.

21 And I have an affidavit from his lawyer that he was  
22 actually instructed -- by Ms. Wall, who was Mr. Scrantom's  
23 lawyer -- that he could not ask questions, but he could sit  
24 there. And because Mr. Nagy didn't have the opportunity to  
25 develop his case, we don't believe that it meets the hearsay

1 exception.

2 MS. WEIS: Your Honor?

3 THE COURT: Yeah.

4 MS. WEIS: We believe that the Federal Rules of  
5 Civil Procedure and Rule 804 allow for the Court to admit the  
6 evidence, along with that someone with similar motives had an  
7 opportunity to defend against the deposition. And Mr. Nagy  
8 obviously thought this was an important enough deposition for  
9 his attorney to attend.

10 And we think that in and of itself, that he had  
11 similar enough motives to the individuals who were attending  
12 the deposition, and cross-examine -- and I'm not exactly sure  
13 on the timing, but I know at some point in connection --  
14 well, at some point surrounding this deposition, Mr. Nagy was  
15 being sued by the trustee who took the deposition.

16 So it seems like, again, he's having similar enough  
17 motives; that the lawsuit arose out of the same conduct and  
18 loan program that was the subject of the lawsuit in which Mr.  
19 Scrantom was deposed.

20 MR. COOPER: Your Honor, there was separate  
21 lawsuits.

22 And as far as motives, I mean, I think Tim Scrantom  
23 didn't have any motive to help Mr. Nagy at that point. And I  
24 think that's very clear from what we are seeing in this case.

25 And Mr. Nagy's lawyer, Fleet Freeman -- I have his

1 affidavit, I can hand it up -- said Ms. Wall said he could  
2 sit there, but he could not ask questions because he wasn't a  
3 party to the action.

4 THE COURT: I don't even see anybody -- the pages I  
5 have -- Tim Scrantom, is that the February 12, 2008,  
6 deposition?

7 MS. WEIS: Correct.

8 THE COURT: Before I guess we use his deposition, I  
9 guess we have to lay a foundation that Mr. Scrantom is not  
10 within 100 miles of the courthouse. I don't know where he  
11 is.

12 MR. CLUKEY: To my knowledge, he's not, Your Honor.  
13 He resides in New York and then has an office in Wyoming, or  
14 a home in Wyoming, and an office in DC.

15 THE COURT: Nothing here?

16 MR. CLUKEY: Nothing here.

17 And we asked him if he could be subpoenaed here and  
18 he said he could not.

19 MR. COOPER: I don't know, I mean, he may have an  
20 office in the People's Building, but if I may hand up Mr.  
21 Freeman's affidavit?

22 THE COURT: Sure.

23 THE COURT: Okay. Well, let's go over the  
24 objections, because then if I overrule your objections, we  
25 will be prepared to go ahead and play it. If I sustain the



1 objections, then what I do is irrelevant, okay.

2 MR. COOPER: The only objection was, from what I  
3 designated, page 52.

4 THE COURT: Yeah.

5 MR. COOPER: Line 16 to 21.

6 THE COURT: Right.

7 MR. COOPER: And again, he's testifying to what his  
8 understanding -- I believe that that portion of what the --

9 MS. WEIS: Your Honor, the copy of the --  
10 unfortunately, we don't have an extra copy of the whole  
11 deposition with us right now and a copy of -- oh, you can  
12 pull it up? Mr. Cooper, what was the citation again?

13 MR. COOPER: Page 52.

14 THE COURT: 16 through 21?

15 MR. COOPER: Yes, sir.

16 MS. WEIS: Your Honor, it's complete hearsay. He's  
17 thinking that they were clearly assured, repeating what was  
18 presented to him. And again, Mr. Scrantom's scienter is not  
19 an issue in this case.

20 So under any sort of 402/403 argument, it wouldn't  
21 come in. But more importantly, it is explicit hearsay.

22 THE COURT: Okay. Are you trying to get that in for  
23 the truth of the matter asserted?

24 MR. COOPER: No. It's just simply to show  
25 consistency.

1 MS. WEIS: Your Honor, then we would -- if that  
2 would be your ruling, if it is, we would ask for the jury to  
3 be instructed, and it being offered not for the truth of the  
4 matter asserted.

5 THE COURT: And if you were a juror and I said that  
6 to you, what would you understand?

7 MS. WEIS: Well, it's very hard for me to step back  
8 out of my lawyer shoes.

9 THE COURT: All right. I'll change -- you can read  
10 that in, okay? I mean, we can play that, assuming you can  
11 play anything.

12 So since it's not for the truth of the matter  
13 asserted, okay?

14 Now, is Sutherland tomorrow, too?

15 MR. COOPER: I have very few of that, too.

16 THE COURT: Okay.

17 MR. COOPER: Page 23 lines 22 through 25.

18 MS. WEIS: Your Honor, Mr. Sutherland works for  
19 Optech, he doesn't work for Bancroft. So any understanding  
20 that he has lacks any foundation to answer this question in  
21 terms of admissible evidence at trial, it seems like we are  
22 repeating hearsay testimony again from, what I'm going to  
23 assume is Charles Cathcart.

24 MR. COOPER: I think it's the same as the last one  
25 about all those folks talking and what their understanding is

1 and what the assurances were.

2 THE COURT: Well, you lay a better foundation in Mr.  
3 Scrantom's case than in this case, so far as in the  
4 deposition. Yeah. I'll keep my ruling the same on that one.

5 The next one is lines 5 through 7 on page 31.

6 MS. WEIS: Your Honor, we don't know at this point  
7 what three legal opinions those are. We've heard testimony  
8 today that Derivium didn't receive anything. So this is  
9 testifying that the document is not in evidence. And we  
10 don't have an indication of, even if they are the documents,  
11 and the Government will have an opinion that Your Honor has  
12 decided could come into evidence.

13 MR. COOPER: I think it's consistent with what  
14 everyone is talking about Charles Cathcart is. Show them  
15 anything, do anything. And he actually witnessed this. And  
16 he's not testifying as to what the legal opinions are, and  
17 it's what did he have personal knowledge of.

18 THE COURT: He, who?

19 MR. COOPER: Mr. Sutherland.

20 THE COURT: Direct personal knowledge of what?

21 MR. COOPER: Of seeing the legal opinions. He says  
22 he was showed them.

23 MS. WEIS: I think the clear inference is those were  
24 favorable legal opinions. I mean --

25 THE COURT: In the history of this and the billions

1 of documents and the hundreds of depositions and the millions  
2 of dollars that have been spent, nobody has yet to find a  
3 legal opinion on the 90% Loan Program.

4 So I'll sustain that. You can keep that in.

5 MR. COOPER: The next one is page 49, 11 through 14.

6 MS. WEIS: Your Honor, we were -- okay. Our primary  
7 concern is that Mr. Sutherland isn't an expert, and he's  
8 offering either a legal opinion or expert testimony at this  
9 point on what the collateral was. He was saying the  
10 collateral -- he was told the beneficial ownership or rights  
11 or return of the stock, but certainly Mr. Sutherland isn't in  
12 a position to tell the jury what the collateral is from a  
13 lawyer/accounting perspective.

14 MR. COOPER: We are just offering for what Mr.  
15 Sutherland believed what the transaction was and what the  
16 collateral was.

17 THE COURT: Okay. I'll stay the way I have it.

18 And the last one is?

19 MR. COOPER: 105, 14 through 22.

20 THE COURT: It doesn't look like he has any personal  
21 knowledge of any of that.

22 MR. COOPER: Again, this is almost exactly like Mr.  
23 Scrantom, on getting the assurances, not for the truth of the  
24 matter, but simply that was the consistent conduct of the  
25 people who were engaged in the Derivium stock loan. There

1 was always assurances that were hedges.

2 MR. CLUKEY: Here, Your Honor, he's actually saying  
3 he doesn't know. He actually lacks foundation. What type of  
4 assurance? Well, I don't know. I wasn't involved in those  
5 operations.

6 MR. COOPER: If you go on and read it, we think  
7 we've got them from Mr. Cathcart.

8 MR. CLUKEY: I think speculating.

9 THE COURT: Okay. I'll stay the same on that one,  
10 too, all right?

11 So two things -- you want these back now?

12 MR. CLUKEY: Yes, Your Honor.

13 THE COURT: Two things that I'm going to answer at  
14 9:00 in the morning. Number one, about Number 39, whether --  
15 I'm sorry, 63 -- whether it qualifies as a business record.

16 And number two, whether or not the Scrantom  
17 deposition can come in, period, okay?

18 Anything else? Okay. All right. Thanks a lot.

19 (Thereupon, the court was in recess.)

20 \* \* \* \* \*

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I certify that the foregoing is a correct transcript from the  
record of proceedings in the above-titled matter.

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Amy C. Diaz, RPR, CRR

January 11, 2011

S/ Amy Diaz

CONTINUED CROSS-EXAMINATION 280

BY MR. COOPER

REDIRECT EXAMINATION 286

BY MS. WEIS

RECROSS-EXAMINATION 295

BY MR. COOPER

MR. YURI DEBEVC 298

DIRECT EXAMINATION 298

BY MR. CLUKEY

Government's Exhibit Number 297 310

Government's Exhibits 3, 43, 60, 81, 87, 90 and 325

101 were received in evidence

1	were received in evidence	325
2	were received in evidence	325
3	Government's Exhibit Number 190	354
4		390
5	Government's Exhibit Number 36	390
6	CROSS-EXAMINATION	392
7	BY MR. COOPER	
8	Government's Exhibit Number 55	407
9	REDIRECT EXAMINATION	424
10	BY MR. CLUKEY	424
11	Government's Exhibit Number 260	426
12	Government's Exhibit Number 176	432
13	RECROSS-EXAMINATION	437
14	BY MR. COOPER	
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